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N. 2] NEW DELHI, SATURDAY, JANUARY 8, 1972/PAUSA 18, 1893

इस भाग में भिन्न पृष्ठ सं या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किये गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories.

ELECTION COMMISSION OF INDIA

New Delhi, the 20th December 1971

S.O. 293.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 19th October, 1971 by the High Court of Kerala at Ernakulam in Election Petition No. 1 of 1971.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

The Honourable Mr. Justice K. Sadasivan.

Tuesday, the 19th October, 1971/*27th Asvina* 1893

ELECTION PETITION No. 1 OF 1971

Petitioner:—

A. V. Raghavan, Advocate, Badagara, Badagara taluk, Kozhikode District.

By Advs. M/s. C.S. Balakrishnan & R. Bhaskaran

Respondents:—

1. K. P. Unnikrishnan, M.P., New Delhi.
2. Smt. Leela Damodara Menon c/o. Sri K. A. Damodara Menon, resident Editor, "Mathurubhoomi" Cochin.
3. A. Sreedharan, Arangil House, Calicut.

R1 by Advs. M/s. V.K.K. Menon, M. Ramachandran & C.J. Balakrishnan.

R2 by Advs. M/s. K. Velayudhan Nair, K. J. Joseph & A. C. Jose.

R3 by Advs. M/s. K. Chandrasekharan & T. Chandrasekhara Menon.

This petition having been finally heard on 6th October, 1971 in the presence of M/s. C. S. Balakrishnan and R. Bhaskaran, Advocates for the petitioner, M/s. V.K.K. Menon, M. Ramachandran and C.J. Balakrishnan Advocates for the 1st respondent, M/s. K. Velayudhan Nair, K. J. Joseph and A. C. Jose, Advocates for the 2nd respondent and M/s. K. Chandrasekharan and T. Chandrasekhara Menon, Advocates for the 3rd respondent, the court on this day delivered the following

JUDGMENT

The petitioner is one of the defeated candidates at the recent election to Parliament from Badagara constituency. He contested the election as an independent candidate. There were three other candidates and they are respondents 1 to 3. Respondents 1 and 2 were sponsored by the Indian National Congress led by Mr. Jagjivan Ram [shortly stated Congress (J)] and the 3rd

respondent by the Indian Socialist Party. The election as held on 6th March, 1971. The votes polled by the candidates were as follows:—

(i) Sri K. P. Unnikrishnan (R1) 1,98,939.

(ii) Sri A. V. Raghavan (petitioner) 1,41,135.

(iii) Smt. Leela Damodara Menon (R2) 2,236.

(iv) Sri A. Sreedharan (R3) 33,893.

The results were announced on 12th March, 1971; the 1st respondent Sri K. P. Unnikrishnan having secured a majority, was on that day declared elected.

The election is challenged by the petitioner mainly on the ground that the 2nd respondent was weeded out from the scene of contest, by the Congress High Command by offering her an assignment as India's representative in the United Nations Human Rights Commission (shortly stated UNHR Commission). This, according to the petitioner, was done by Sri Jagjivan Ram, the President of the Indian National Congress with the connivance of the Prime Minister Smt. Indira Gandhi. The petitioner would maintain that this is a corrupt practice falling under S.123(1)(A) and (B) of the Representation of the People Act, 1951 (shortly stated the Act) and he seeks to set aside the election on this ground. In support of the petitioner's contention he has averred the following facts in his petition:—

On 23rd January, 1971 the Kerala Pradesh Congress Committee representing Congress (J) presented a list of names of candidates to the High Command for its consideration. On or about 28th January, 1971 the President of the K.P.C.C. announced the names of his party's candidates as approved by the Central Parliamentary Board. The 2nd respondent was announced as the party's candidate from Badagara Constituency Accordingly she filed her nomination from that Constituency on 1st February, 1971. On 3rd February, 1971 respondents 1 and 3 and the petitioner also filed their nomination papers. The 1st respondent filed his nomination as a candiate sponsored by Congress (J). Then an announcement was made by Sri Uma Sankar Dixit, General Secretary of the party that one of the two candidates sponsored by Congress (J) would withdraw and that Sri Jagjivan Ram would hold discussions, for that purpose, with the President of the K.P.C.C. On or about 6th February, 1971 the 2nd respondent made a Press Statement announcing that she had withdrawn her candidature. She had also stated that on technical grounds her withdrawal was not accepted by the Election Commission. The 2nd respondent who had stuck on to her candidature was finally prevailed upon by Sri Jagjivan Ram and Smt. Indira Gandhi to withdraw in favour of the 1st respondent and in consideration of that she was offered the unique honour of being India's representative in the UNHR Commission for a period of one year. This offer, the petitioner understands, was made between the 3rd and 6th of February 1971. On 16th February, 1971 the official announcement came from the Central Government stating that the 2nd respondent was made India's representative in the UNHR Commission. The 1st respondent, as the Delhi Reporter of the "Mathrubhumi", wielded enormous influence in Congress circles at Delhi and was able to bring pressure on the Congress President and Smt. Indira Gandhi to pave the way for his success at the Election by whisking away the 2nd respondent from the scene by offering her the assignment in the UNHR Commission. Reports came in the "Mathrubhumi" of the 2nd respondent's reluctance to withdraw from the field; but ultimately she withdraw and supported the candidature of the 1st respondent. On 16th February, 1971 the announcement came from the Government of India that the 2nd respondent was chosen to lead the Indian Delegation to the UNHR Commission. The assignment was to last for one year and she left for Geneva on 21st February, 1971. In the mean time the election took place. According to the petitioner, the withdrawal of the 2nd respondent was procured by the corrupt practice of choosing her as the leader of the Delegation to the UNHR Commission. The circumfrances leading to her withdrawal, according to the petitioner, would show that she was induced to withdraw by promise of the said assignment. The Congress Party under whose ticket R1 and R2 filed their nominations was the party, in power at the centre and the President of the party is a Minister also. It was, therefore, possible for their party to make their offer to R2 through the Central Government. As seen from the news item that appeared in the "Mathrubhumi" dated 23rd January, 1971, all the 7 candidates put up by the party in Kerala to Lok Sabha, were the unanimous choice of the K.P.C.C. In the Mathrubhumi dated 30th January, 1971, it was reported that the Kerala List had been fully approved by the Central Parliamentary Board. But on 1st February, 1971 the news item appeared in the Mathrubhumi that instead of R2, R1 the Delhi Reporter of the Mathrubhumi was chosen as the Congress Candidate. From R2's statement which appeared in the Mathrubhumi dated 2nd February, 1971, it was clear that she stuck on to her decision to contest, as she had a good chance of success in view of her past sacrifices and associations with the organisation and the Society. The report also pointed out the reactions amongst the office-bearers of the party against th change. In the Mathrubhumi dated 3rd February, 1971, the K.P.C.C. President is reported to have expressed his helplessness in finding a solution to the problem. The change was vehemently criticised by R2 and that statement was also published by the Mathrubhumi. She even stated that she was shocked to hear the decision, especially when she had started her election compaign by putting up banners and starting wall-markings and writings. It is at this Juncture that R2 was removed from the scene by choosing her as the Indian representative in the UNHR Commission. It is also significant, according to the petitioner, that she had chosen an independent symbol also along with the Congress symbol. It was reported that if she contested as an independent candidate the Jana Sangh would support her. Smt. Indira Gandhi had issued a special appeal to the voters of the Badagara Constituency to elect R1 and this statement appeared in the Mathrubhumi dated 4th March, 1971. Smt. Indira Gandhi and Sri Jagjivan Ram have committed corrupt practice falling under S. 123(1) of the Act by exploiting their position as members in the Cabinet and proposing R2 to represent India in the UNHR Commission. This was done to further the chances of success of R1.

R1 also is equally guilty of the corrupt practice along with R2, Smt. Indira Gandhi Sri Jagjivan Ram and members of the K.P.C.C. in having offered to the 2nd respondent gratification in the shape of an assignment in the World Body as Indian Representative with the object of inducing her to withdraw from contest. R2 is guilty of corrupt practice in the sense that she accepted the offtr. The offer was made to R2 by Smt. Indira Gandhi and Sri Jagjivan Ram at the instance and with the consent and knowledge of the 1st respondent who had great influence over Smt. Indira Gandhi and Sri Jagjivan Ram.

On these facts the petitioner would pray that the election of the 1st respondent be declared void and set aside as it is vitiated by corrupt practice under S. 123 (1)(A) and (B) of the Act.

R1 in his written statement has denied the charge of corrupt practice alleged against him by the petitioner. He was granted the party ticket by the Central Election Committee to be the candidate of the party for the Badagara Constituency. It is true that R2 had filed her nomination as candidate for the party; but that was before the list of candidates of the party for Kerala was approved and announced. He was the only candidate approved by the Central Election Committee. The K.P.C.C. President was duly informed from the Central

Parliamentary Board about R1's choice as the party-candidate and he in his turn informed the Chief Electoral Officer, Trivandrum. Thereupon the 2nd respondent filed her withdrawal application of her own free will, without anybody's compulsion; but due to technical reasons the withdrawal application was rejected by the Returning Officer. She, therefore, continued as an independent candidate with a free symbol, viz., coconut tree bearing fruits. She had no intention at all to contest the election, as R1 had been chosen as the party-nominee. The practice obtained in the party is that the District Congress Committees would submit their recommendation to the All India Congress Committee. It is the Central Election Committee of the party that finally decides upon the candidates for each constituency. As it was a mid-term election the working committee of the party by a resolution authorised the Central Parliamentary Board to function as the Central Election Committee. Thus it was the Central Parliamentary Board that decided the candidates. The list submitted by the Kerala Pradesh Congress Committee was only in the nature of recommendation submitted to the All India Congress Committee. It was that list that was published on 28th January, 1971, a list which was yet to be considered by the Central Parliamentary Board. The list was finalised and published by the Central Parliamentary Board on 31st January, 1971. According to that list R1 was the party's candidate chosen to contest the election in the Badagara Constituency. Accordingly the K.P.C.C. wrote to the Chief Electoral Officer at Trivandrum to allot the party's symbol to R1. R2 filed her nomination as an alternative candidate only and when the 1st respondent was announced as the approved candidate, she naturally withdrew her nomination. This was only an internal matter of the Congress Party. The allegation that R2 refused to withdraw is not correct. She has all along been a sincere and loyal member of the party and she never intended to contest except as a party-candidate. The allegation that Sri Jagjivan Ram and Smt. Indira Gandhi prevailed upon the 2nd respondent to withdraw in favour of the 1st respondent in consideration of her securing membership in the UNHR Commission is false and malicious. Her withdrawal had nothing to do with her membership in the Commission. It is wrong to say that the offer of membership in the Commission was made to her between the 3rd and 6th of February, 1971 consequent on her withdrawal in favour of R1. Her nomination India's representative in the Commission was announced only on 16th February, 1971. R2 is an eminent social worker and she has been associated with many women's organisation in India. Ladies with such political and social back ground, qualified to represent India in international bodies are comparatively few. She was, therefore, eminently fit for the assignment and accordingly she was nominated to the Commission by the External Affairs Ministry of the Government of India in the usual course. R1 had no part to play in the affair. He had no information or knowledge or even the possibility of his knowing about her nomination till the news appeared in the news papers. He had left New Delhi on the 1st of February 1971, and had not returned till after the elections. During the period he had no sort of contacts with either the Prime Minister or Sri Jagjivan Ram. It is open to any political party to decide who should be its candidate for the election. The choice of one person against another does not imply any request or pressure on the other to withdraw from the election. The allegation that the election was vitiated by the corrupt practice employed, is false. The allegation regarding corrupt practice is itself vague and ambiguous. The news paper reports and pamphlets relied on by the petitioner do not further his cause. Most of the reports are either incorrect or inaccurate The allegation that R1, Smt. Indira Gandhi and Sri Jagjivan Ram have conspired together and decided to send R2 away from India is false and is denied. At no time had R1 heard from the Prime Minister or Sri Jagjivan Ram anything about R2's nomination to the Commission. The election is not vitiated by any corrupt practice and is not liable to be set aside.

R2 also has filed a written statement, in which she has denied the charge that she withdrew from the contest in consideration of her nomination to the UNHR Commission. She has stated further, that the newspaper reports, on which reliance has been placed by the petitioner, cannot be relied on for any purpose for the reason that the reports are mostly inferences drawn by the reporters or their figments of imagination. The allegation that R2 was proposed to the UNHR Commission by Smt. Indira Gandhi and Sri Jagjivan Ram is denied. No inducement was made to her by anybody, She has ever been a loyal worker of the Congress Party, always ready and willing to abide by the mandate of the party. The moment she became aware that the 1st respondent was the official nominee of the party, she expressed her willingness to withdraw and render all support to him, an she had actually withdrawn also from contest. No gratification was offered to her in the shape of an appointment in the world body as India's representative. Her nomination to the Commission came only long after she had withdrawn her candidature. She was the Secretary of All India Women's Conference and is even now holding that place. She has also gained experience as a worker in Social Educational and Political fields. Her nomination to the UNHR Commission was in recognition of such experience and her past services. It was never made with the object of inducing her to withdraw her candidature. It is not uncommon that the proposals made by the Pradesh Committee is superseded by the decision of the Central Board. It is untrue to say that the 2nd respondent's presence in Kerala was an obstacle to the victory of the 1st respondent. On the other hand, her presence in Kerala would have only contributed to the success of the 1st respondent. Even if R2 had not withdrawn, that would not have very much changed the position in the constituency. She has not committed any corrupt practice by accepting her nomination as a member in the UNHR Commission.

R3 has not filed any written statement.

On the above pleadings, the following issues were raised for trial:—

(1) Is not the petition maintainable: Is it led out of time?

(2) Was the 2nd respondent offered the appointment as Indian Delegate to the United Nations Human Rights Commission to induce her to withdraw from contesting the election; Was the offer made by the Congress High Command led by Sri Jagjivan Ram and Smt. Indira Gandhi; If so, when was the offer made?

(3) Was not the appointment of the Second respondent as Indian Delegate to the United Nations Human Rights Commission made by the External Affairs Ministry of the Government of India in their usual course of business?

(4) Was the offer of appointment made with the consent and/or knowledge of the 1st respondent?

(5) Was the result of the election so far as the petitioner is concerned materially affected by the withdrawal of the second respondent from the contest; Was the withdrawal of the second respondent made with the intention of furthering the changes of success of the 1st respondent?

(6) Would the offer of appointment and its acceptance by the second respondent amount to corrupt practice as contemplated in S. 123 of the Representation of the People Act?

(7) Was the second respondent an alternate candidate of the Congress Party led by Sri Jagjivan Ram as contended by the 1st respondent?

(8) Does the alleged corrupt practice described in the petition, even if taken to be proved, amount to bribery as defined in S. 123 of the Act?

(9) Is the election of the 1st respondent liable to be set aside as being vitiated by corrupt practice under S. 123 (1) of the Act?

(10) Re: *costs and reliefs*?

Before turning to the question of corrupt practice alleged against respondent No. 1, it would be convenient, at this stage, to deal with limitation covered by issue No. 1. The election was held on 6th March, 1971 and the results were announced on 12th March, 1971. Under S. 81 of the Act, an election petition has to be presented before the Tribunal within four-five days from, but not earlier than, the date of election of the returned candidate. So the petition ought to have been filed, in the normal course, on the 26th of April. But the petition was filed only on the 22nd of May for the obvious reason that the summer recess had intervened in the mean time. Under S. 4 of the Limitation Act:—

> "Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens."

And under S. 29(2), sections 4 to 24 (inclusive) are made applicable to special or local law (Representation of the People Act is a Special Law) in so far as, and to the extent to which they are not expressly excluded by such special or local law. This position has been upheld by the Supreme Court in *Mishra v. Narayan Sharma* (A.I.R. 1970 S.C. 1477). There, the question that arose for consideration was whether an appeal under S. 116A of the Act was filed in time. The court held:—

> "By virtue of S. 29(2) of the Limitation Act, Ss. 4 and 12 thereof apply and if the appeal is filed on the date on which the court reopens after the recess it will be regarded as within time if the period of limitation, after taking into account the time requisite for obtaining a certified copy, had expired during the course of the recess."

Learned counsel for the 1st respondent contended for the position that it must be presumed that the Limitation Act is impliedly excluded. I see little scope for such a contention and the wording of S. 29(2) would, in fact, rule out such a contention. Counsel also pointed out that the ruling was rendered under the Act before amendment and as such it has no binding force in the present case which is one coming under the amended Act. I fail to see any force in this contention either. Under the amended Act, no doubt, a petition calling in question the election is to be filed before the High Court, while under the Act such a petition had to be filed before the District Judge having jurisdiction, constituting himself the Election Commission. Under the former Act, appeal from the decision of the Election Commission lay to Division Bench of the High Court, whereas under the present Act, it lies to the Supreme Court. Bearing this difference, no other material change appears to have been brought about by the amendment and this change has no bearing on the time allowed for filing the election petition. I, therefore, hold that the present petition is within time.

The other issues can conveniently be considered together. It is the case of the petitioner that the Congress High Command was worried over the 2nd respendent's obstinacy in contesting the election as against R1, the party's official candidate and unless she was removed from the scene, the success of R1 was doubtful. There was the dangef of congress votes splitting and in such a contingency the petitioner stood a good chance of success and it was in this back ground that Smt. Indira Gandhi and Sri Jagjivan Ram of the Congress High Command thought of weeding away R2 by offering her the honour of representing India in the UNHR Commission. This plot succeeded and R2 withdrew her nomination. It is the further case of the petitioner that this was brought about by the consent and knowledged of R1. On carefully scanning the materials placed before me in support of this allegation, I am unhesitatingly of the view that the allegation is baseless. R2 withdrew her candidature on 6th February, 1971; but her nomination to the UNHR Commission was announced only on 16th February, 1971. To establish the nexus between the withdrawal of her candidature and her nomination to the Commission, the petitioner would allege that the offer was made sometime between the 3rd and 6th February. For this there is absolutely no evidence. According to both R1 and R2, nomination to such international bodies like the UNHR Commission is normally made by the External Affairs Ministry and not by the Prime Minister. The petitioner was not able to point out any circumstance to refute this assertion. R2 has stated in her evidence that this is not the first time that she is given the privilege of representing India in such International Bodies. She has to her credit a fairly long period of service in the social and political fields and it is in consideration of such services, that she was chosen to represent India in the Commission. Before her eminent ladies like Smt. Lakshmi N. Menon, Smt. Hanna Sen and Smt. Tarakeswari Sinha have represented India in the Commission. The present assignment is to last only for one year and it is the case of the 2nd respondent that it is not an office of profit bringing any income to her. It is highly problematic in such circumstances that she could have yielded to the pressure, if at all any pressure was exerted on her; to withdraw her candidature. She has stated in her evidence that she filed her nomination paper on the 1st of February as directed by the K.P.C.C. President. It is true that on the 31st of January there was a Radio announcement from Delhi to the effect that R1 was selected as the party-candidate for the Badagara Constituency. One might ask why even after that, she found it fair and proper to file the nomination. Her answer to this, is that she had no official information through the K.P.C.C. President, or from other sources that R1 had been chosen as the party-nominee for the Badagara Constituency. When she was officially told that R1 was chosen in her place, she withdraw. Due to technical reasons, no doubt, her petition for withdrawal was not accepted by the Returning Officer. So she continued to be a candidate on paper and people misled by that circumstance had thought it fit to exercise their votes in her favour and she happened to poll as many as 2,236 votes. Candidates were chosen for 7 Lok Sabha seats from Kerala by the Pradesh Committee and in that list Smt. Leela Damodara Menon was also included. According to the party Rules this list has to receive the assent of the Central Parliamentary Board and then only could it be said that the list was final. Accordingly the K.P.C.C. President proceeded to Delhi as is evident from Ex. P2 report, of Mathrubhumi dated 23rd January, 1971. To queries put by Press Representatives, the K.P.C.C. President Sri Viswanathan refused to divulge the names of the candidates and he is reported to have told them that only after getting the seal of approval of the Central Parliamentary Board could he divulge the list; (this is seen from Ex. P2). But in his parleys at Delhi Sri Viswanathan could not meet the Congress President and this is gatherable from Ex. P4 (Methrubhumi report dated 3rd February, 1971 and published in the issue dated 4th February). He was able to meet only a few members of the Central Parliamentary Board and the Prime Minister. From his discussions with them the idea he gathered was that the list was acceptable to them all. He made an attempt to interview the Congress President; but he could not do so as he was told that the President was ill. With the impression that he gathered from the persons whom he was able to meet, he returned to Kerala and issued instructions to the various candidates included in the

list, to file their nomination It was in this back ground that R2 also filed her nomination. This is clear from Ex. P-5, Mathrubhumi dated 2nd February, 1971, wherein R2 is reported to have stated that she acted only according to the directions of the K P C C President As a matter of fact the list carried by the K P C C President for the approval of the Central Parliamentary Board was not officially approved by them The impression that he was able to gather from Delhi circles that nobody was opposed to the list, was not correct Board's approval was subsequently communicated to the K.P C C President and in the list so approved Smt Leela Damodara Menon was seen replaced by Sri K P Unnikrishnan Exs P3 and P3 (a) are reports of the Mathrubhumi dated 3rd February, 1971 which would throw light on this matter Therein, the K P C C President has conceded that the ultimate authority to fix up the candidates is the Central Parliamentary Board and this power of the Board is unquestioned Thereafter he issued instructions to R2 to withdraw and she did accordingly by presenting her application on 6th February, 1971 R2's nomination to the UNHR Commission was not whispered by anybody or from any quarters in any of these days In the light of these proved facts and circumstances, it is idle for the petitioner to contend that R2 was induced to withdraw by offering to her the nomination in the UNHR Commission. That nomination came only on the 16th It is difficult in the circumstances to connect her withdrawal with her subsequent nomination in the UNHR Commission Ext P11 (Mathrubhumi report dated 3rd February published in the issue of 4th February) was relied on by the counsel for the petitioner to show that Smt Indira Gandhi and Sri Jagjivan Ram had a hand in whisking away R2 from the scene of contest by offering here a seat in the UNHR Commission In Ex P11, R1 is stated to have told the Press Representatives that it was at the instance of the Congress President and the Prime Minister (through the General Secretary Uma Shankar Dixit) that he happened to file his nomination and from this statement the learned counsel would infer that both the Congress President and the Prime Minister must be instrumental in providing R2 a seat in the UNHR Commission and thus strengthen the chances of success of R1 This report was put to R1 in the witness box and it was emphatically denied by him No such statement was ever made by him to any Press Representative Of course, the reporter in question was examined before me and he stated that such a statement was made by R1 In the face of such emphatic denial coming from the candidate himself, I do not propose to give any particular weight to the reporter's evidence It is only the substance of the statement that the reporter releases to the Press, substance in his own language, and errors are likely to occur in the process Even granting that he was advised by the Congress President and the Prime Minister to present his nomination, could it be further inferred therefrom that R2 was offered her Assignment in the UNHR Commission also, by them? Without other stronger and more conclusive materials it is impossible for me to draw the inference that either the Congress President or the Prime Minister was behind R2's nomination to the UNHR Commission

From some of the Press Statements attributed to R2 it is, of course, possible to infer that she did not relish the change made by the Central Parliamentary Board in the list submitted to them by the K P C C President This dissatisfaction was strongly felt by her and she seems to have given expression to it also in strong terms Exs P1 and D1, in particular, would reflect the depth of her feeling Ex P1 is a report that appeared in the Malayala Manorama dated 16th May, 1971 She was talking to a friendly gathering at the Y M C A Hall, Kozhikode, convened to congratulate her on her getting the UNHR Commission In the course of the talk she is stated to have referred to the replacement of her candidature at Badagara In a jocular spirit she seems to have stated that it was when her own human rights were imperilled that she thought of going as a representative to the World Human Rights Commission This Statement was denied by her in the witness box, even though the reporter would maintain in his evidence that such a statement was made It has to be remembered that her address was in English and what was reported was the Malayalam rendering of it Malayalam rendering might or might not be exact That apart, the point to be remembered is that even if it is conceded that such a statement was made, it had nothing to do with the corrupt practice alleged against her The worst that could be said in respect of Ex P1 statement, is that the dissatisfaction and bitterness felt by her about the change were still lingering in her mind Ex D1 is a much earlier statement (Mathrubhumi dated 4th February, 1971) alleged to have been made even before she filed her application for withdrawal In that she is reported to have said that great injustice was shown to her by the Central Parliamentary Board in not accepting her candidature. It was an injustice done not only to her individually, but to womanhood as a whole A deputation of the Congress workers from Badagara met and informed her that acceptance of R1's candidature by the Central Parliamentary Board had created confusion in the constituency and it was in that connection that the above said statement happened to be made by her Counsel would argue from this statement that she was adamant in contesting even after R1's name was announced from Delhi as the candidate approved b ythe Central Parliamentary Board. But I cannot accept the contention In Ex D1 itself she has hinted that she does not want to rebel against the decision of the Central Parliamentary Board for a more seat in the Parliament, she was not prepared to sacrifice her past and become a rebel She would, however, do so for some high principle

To bring in the Prime Minister in the Controversy and connect her with the alleged corrupt practice, the petitioner has relied on an episode also, that is, that on the 3rd of February at about 4 a m R1 by mistake had gone to the petitioner's house and in the course of their conversation had divulged to him that Smt Indira Gandhi would pressurise R2 to withdraw her candidature by offering her the Assignment of being the leader of the delegation to the UNHR Commission The petitioner's case is that R1 mistakenly thought that it was Mr Raghavan Nair's house (Raghavan Nair is an Advocate at Badagara who was supporting R1) R1 is stated to have conversed with the petitioner thinking that the latter was Sri Raghavan Nair, the story is not believable The petitioner himself has stated that on seeing R1 they recognised each other and it was after that, that the conversation started After knowing each other, R1 as a prudent man would never have made such disclosure to the petitioner I am not, therefore, depending on this alleged episode, for any purpose

According to the petitioner the circumstances dealt with above, viz, the various Press statements, the acceptance by R2 of the Assignment just before the date of the election and the casual meeting between the petitioner and R1 in the early hours of the morning of the 3rd February and the disclosure made rather unwittingly to him, are sufficient to show the connection between R2's Assignment in the UNHR Commission and her withdrawal, and further that Smt Indira Gandhi, Sri Jagjivan Ram and R1 had all conspired together to bring about that result But to me it appears that none of the circumstances mentioned by him taken singly or collectively would help him in establishing the corrupt practice as alleged by him

There is also the insurmountable difficulty in proving that the alleged offer was made to R2 by the candidate or his agent or by any other person with the consent of the candidate, which is a vital factor in fastening liability upon that candidate so as to make the election void Relying on Nani Gopal Swami V Abdul Hamid Chowdhury (A I R 1959 Assam 200) a Bench ruling of the Assam High Court it is argued

by the learned counsel for the petitioner that for the purpose of the Act the expression "agent" has a much wider connotation that it is ordinarily understood to have under the law of contract, and that anybody, who acts in furtherence of the prospects of the candidate's election may be said to be an agent of the candidate concerned provided he does so with the consent of the candidate.

"This consent may not be necessarily an express consent and no written document is necessary. It may be gathered and implied from the circumstances of the case. Under the Act, an 'agent' includes not only a person, who has been specifically engaged by the candidate or his election agent to work for him in the election but also apperson who does in fact work for him and whose services have been accepted by the candidate....The case however of an 'agent' who has been proved to be regularly working for the candidate during the election stands on a somewhat different footing. In his case, approval or consent to any act done by him to promote the candidate's election is implied. Where, therefore, corrupt practice in the course of the election proceedings is attributed to an 'agent', it raises a strong presumption that it was done at the instance or with the express or implied consent of the candidate himself. The candidate is himself vacariously responsible for the act and conduct of his 'agent' during the election."

The language of sub-s. (2) of S. 100 strengthens the above view. Thus according to the court, anybody who acts in furtherance of the prospects of the candidate's election would constitute himself an agent of the candidate for the purpose of the section, and when that fact is established consent of the returned candidate must be presumed. Yugal Kishore V. Mukund Singh A.I.R. 1961 Raj. 122) is also cited to support the above proposition. This decision follows A.I.R. 1959 Assam 200 (Cited supra) and in both the cases the leading judgment was written by Sarjoo Prasad, C.J., who in 1961 when he rendered the latter decision was the Chief Justice of the Rajasthan High Court. The learned Judge observed in the Rajasthan case:—

> "This, in our opinion, is a complete misconception of the legal principle, (that express consent of the returned candidate had to be proved before he could be held liable for the act of the agent) and we regret to have to say that the Tribunal did not properly appreciate the decision, which was delivered by me as the Chief Justice of the High Court of Assam in Nani Gopal Swami *v.* Abdul Hamid Chowdhury —A.I.R. 1959 Assam 200—on which, as the Tribunal observes, both parties relied before it. It was expressly pointed out in that case that an association of persons or a society or a political party or its permanent members, who set up a candidate, sponsor his cause, and work to promote his election, may be aptly called the agent of the candidate for election purposes—....Therefore it must be held that the publications in this case were by the agents of respondent No. 1 and we cannot believe that the respondent was unaware all along about the activities of his agent."

The Kerala High Court had to consider this question in Abdul Majeed *v.* Bhargavan (A.I.R. 1963 Ker. 18). A.I.R. 1959 Assam 200, and other decisions which proceeded on the same lines were reviewed by the learned Judges in that case; Velu Pillai, J. who spoke for the Bench observed:—

> "Under the 1956 amendment there was general consensus of opinion that the term 'any other person in sub-section (1)(b) would include an agent....We are aware that in defining the several corrupt practices S. 123, has used the term 'agent' in contradistinction with 'any other person', but this might well be to clarify that the consent of the candidate or his election agent is not a necessary element in the definition of corrupt practice by an agent. However, it seems to us that more appropriate language might be employed in sub-s(1)(b), in view of the juxtaposition of ss. 100 and 123. Even if there is an anomaly on this account, we think the greater anomaly would be to exclude an agent from the scope of the expression 'any other person in sub-s(1)(b) (of S. 100)."

The learned Judge would continue to observe:—

> "Consent of the returned candidate or his election agent to the actual commission of corrupt practice by any other person, is part of the specification in sub-s(1)(b) of the ground for nullifying the election. If as we have held, the term 'any other person' includes an agent, sub-s(1)(b) would come into play only if the agent commits the corrupt practice with the requisite consent. This follows from the plain language of the provision. Consent to the actual commission of the corrupt practice under sub-s(1)(b) must be differentiated from consent which is part of the definition of the term 'agent' in the explanation to S. 123, which is consent given to a person by the candidate, and never, be it noted, by the election agent, to act 'as an agent in connection with the election'. The latter consent is part of the make-up of the constitution of an agent, and without such consent, which may be either express or implied, there could be no agency even in the law of election.....Despite the distinction in the definitions in S. 123, it must follow from our conclusion that the term 'any other person' in sub-s(1)(b) includes an agent, that sub-s (1)(b) and sub-s(1)(d)(ii) between them make a distinction in prescribing the conditions for nullification of an election. The reason for the distinction is not far to seek and lies in the greater measure of responsibility of the returned candidate for what the agent does with consent, that for what the latter does without it but in the interests of the former. We consider that this is the reasonable way to interpret sub-s(1)(b). To accept the contention, that no consent to an agent is necessary under sub-s(1)(b), would be to do away with this distinction and to render sub-s(1)(d)(ii) otiose."

S. 100 of the Act deals with the grounds for declaring election void; whereas S. 123 deals with corrupt practices. One of the grounds dealt with in S. 100(1)(b) is the commission on corrupt practice by a returned candidate or his election agent or any other person with the consent of a returned candidate or his election agent. In the explanation to S. 123(7) it is stated that:—

> "In this section the expression 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate."

S 123(1) of the Act, while dealing with 'bribery' which is a corrupt practice would elucidate:

> "Any gift, offer or promise by a candidate or his agent or by any other person with the consent on a candidate.....".

According to the Kerala decision cited above, persons on whom agency will be imposed by law, viz., anybody who acts in furtherance of the prospects of the candidate's election will come under the second category, viz., "any other person with the consent of a candidate or his election agent." Thus if the corrupt practice alleged to have been committed by Smt. Indira Gandhi and Sri Jagjivan Ram is taken to have been established, it has to be further shown that it was committed with the consent of the candidate or his election agent. For

this, there is no proof. In dealing with agency in this connection the following observation appears in Halsbury's Laws of England, 3rd Edn., Vol. 14, p. 170:—

> "It is not necessary in order to prove agency to show that the person was actually appointed by the candidate or that he was paid. The crucial test is whether there has been employment or authorisation of the agent by the candidate to do some election work or the adoption of his work when done."

Learned counsel pointed out that Smt. Indira Gandhi had issued a personal appeal to the voters of the Dadagara Constituency for the success of R1. But it appears that she had issued such appeal in respect of other candidates in other constituencies as well. This, in my view, is not helpful in proving corrupt practice in the present case. As a prominent member of the party there is nothing wrong in her blessing the candidates set up by the party and even canvassing for them.

The point with which we are directly concerned is whether any corrupt practice at all has been committed and if so such corrupt practice has been committed by the returned candidate or his election agent or any other person with his consent. I have found above that no corrupt practice falling under S. 123 of the Act has been proved to have been committed and even if the assignment of a seat to R2 in the UNHR Commission is to be construed as a corrupt practice the petitioner has not succeeded in proving further that such corrupt practice was committed by the candidate or his election agent, or any other person with his consent or knowledge. All the above points have, therefore, to be found against the petitioner and I do so. Learned counsel argued also for the position that the result of the election having been materially affected by the corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, under S. 100(1)(d)(ii), candidate's consent is unnecessary. This is simply begging the question. In the first place, there is no proof of any corrupt practice having been committed by any agent, and secondly, even if it is conceded that something like that had happened the result of the election has been materially affected in so far as it concerns the returned candidate is highly speculative. Yardstick is lacking to measure the result that could have accrued in such a contingency. None of the grounds, in my view, has been established in the case.

The result is that the Election Petition is dismissed. The petitioner will pay one half of the costs, including advocate's fee of Rs. 200/- to the 1st respondent and suffer his costs. The other respondents will suffer their costs.

Sd/- K. SADASIVAN, Judge.

19th October, 1971.

[No. 82/KL/1/1971.]

By Order,

A. N. SEN, Secy.

MINISTRY OF LABOUR AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 20th December 1971

S.O. 294.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal No. 2, Dhanbad in the industrial dispute between the employers in relation to the Hindusthan General Insurance Society Limited, Ranchi and their workmen, which was received by the Central Government on the 15th December, 1971.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE NO. 8 OF 1970

In the matter of an industrial dispute under S. 10 (1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Hindusthan General Insurance Society Limited, Ranchi.

AND

Their workmen.

APPEARANCES:

On behalf of the employers—Shri M. L. Sen, Advocate & Shri P. K. Bose, Advocate.

On behalf of the workmen—Shri P. Choudhury, Advocate.

STATE: Bihar. INDUSTRY: Insurance.

Dhanbad, 9th December, 1971

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Hindusthan General Insurance Society Limited, Ranchi and their workmen, by its order No. 40/17/70-LR.I dated 27th June, 1970 referred to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

> "Whether the action of the management of the Hindusthan General Insurance Society Limited, dismissing from service Shri P. K. Das, Assistant in its Branch office at Ranchi was justified. If not, to what relief is he entitled and from what date?"

2. Workmen as well as the employers filed their statement of demands. Employers also filed rejoinder to the statement filed on behalf of the workmen.

3. The Hindusthan General Insurance Society Limited is a registered company with its head office at Calcutta. It has its regional office at Patna for the purpose of administration. The regional office for the purpose of administration and business maintains a number of branch offices under its direct control and one such branch offices is at Ranchi. The affected workman, P. K. Das was a permanent employee, an assistant, in the Ranchi branch office since January, 1968. He was dismissed from service under the letter dated 26th December, 1969 with effect from 1st January, 1970 offering him one month's salary. These facts are not in dispute. The case of the Hindusthan General Insurance Society Limited (hereinafter referred to as the employers) is that the affected workman was dismissed from service on charges of theft, fraud, misappropriation of the employers' properties and wilful insubordination and disobedience proved against him in a domestic enquiry held by A. K. Parbat, the Superintendent of Patna regional office and that the order of dismissal was legal and justified. The employers have also taken legal objections against maintainability of the reference. The statement of the workmen is that the order of dismissal against the affected workman was the result of the affected workman being an active member of the union and an eyesore to the local officers of the management and his raising objection to the adjustment of the entire amount of Rs. 301.50 in a lump sum from his Puja bonus being half of the amount found short on 4th March, 1969 during his absence while the key of the locker of the office almirah was in possession and custody of the branch manager. According to the workmen no proper charge-sheet was issued to the affected workman and no enquiry was held into the charge-sheet in accordance with the

principles of natural justice and, as such the order of dismissal was illegal, malafide and unfair labour practice and act of victimisation. In the rejoinder the employers have not pleaded any new fact but denied the adverse allegations made by the workmen and also that they were actuated by any motive in dismissing the affected workman. The workmen were represented by Shri P. Choudhury, Advocate and the employers by Shri M. L. Sen and P. K. Bose, Advocates. On admission by the workmen, Exts. M1 to M5 for the employers and on admission by the employers, Exts. W1 to W12 for the workmen were marked. On 19th October, 1971 the parties were directed to lead evidence independently of the domestic enquiry as though the Tribunal had held the domestic enquiry as not proper. On behalf of the employers 5 witnesses were examined and Exts. M6 to M18 and W13 were marked. Workmen examined 2 witnesses and marked Exts. W14 to W18 and M19 to M23.

4. The legal objections taken by the employers against maintainability of the reference are two, namely (1) that the Central Government was not the appropriate government for making the reference and (2) that no industrial dispute existed between the employers and the affected workman.

(1) The contention of the employers that the Central Government was not the appropriate government to make the reference is based on two grounds, (i) that the test applicable to the jurisdiction of an ordinary civil court, place of cause of action and residence of parties, which are also applicable to the appropriateness of the government for making a reference under the Industrial Disputes Act, was not satisfied by the Central Government, and (ii) that the regional office of the employers and its branches in the State of Bihar were registered under the Bihar Shops & Establishment Act, 1953, that the Bihar Act is a complete Act with provisions for dismissal and discharge of the employees and for appeal by the aggrieved employee, that their having been no appeal against the dismissal of the affected workman before the State Labour Court, the order of dismissal had become final and that as such the industrial tribunal constituted under Sec. 7-A of the Industrial Disputes Act was not the proper forum to agitate the dismissal order passed against the affected workman. The Industrial Disputes Act is enacted with a view to make provision for investigation and settlement of industrial disputes and for other purpose. It is an independent Act and is not subject to the Bihar Act, or any other Act. *Under* it industrial disputes are adjudicated and awards are made which require acceptance by the Central Government before they become enforceable. Under the definition of "appropriate Government" under S 2(a) (i) of the Industrial Disputes Act the Central Government is the appropriate government in relation to any industrial dispute concerning an insurance company also. It does not make any difference if the insurance company is registered or not under any other Act In view of this, residence of the parties and place of cause of action have no relevancy. Similarly the provisions of Bihar Shops & Establishment Act, 1953 also cannot be invoked. In Chalchitra Karamchari Sangh vs. Regal Talkies, Gwalior (1964-I.L.L.J. 684) the Madhya Pradesh High Court had to deal with a similar case. In that case the industrial tribunal declined to entertain the reference on the ground that the grievances of the dismissal employees could be redressed under the Madhya Pradesh Shops & Establishment Act. The High Court set-aside the award observing that the dispute which was referred to the industrial tribunal fell within the purview of the Industrial Disputes Act and not of the Madhya Pradesh Shops & Establishment Act. The High Court has also referred to the decision of the Federal Court in Shamnugger J.F. Co. vs. S.N. Modak (AIR 1949-F.C. 150), where it has been observed that the tribunal contemplated by Sec. 15 of the Payment of Wages Act is not one which could affect the jurisdiction of the tribunal set up under the Industrial Disputes Act. Hence, I find no substance in the objection.

(2) The other objection taken by the employers is that there was no industrial dispute existing between the employers and the affected workman, and as such the reference by the Central Government was not legal. In substance the employers mean that in respect of the dismissal of the affected workman, the affected workman or the union did not raise any dispute with the employers before it was raised with the Conciliation Officer. It is a mixed question of law and fact. Ext. W15 is a letter to the regional manager of the employers from the general secretary, General Insurance Association, the union which has espoused the cause of the affected workman and is contesting the case. It is proved by WW1, who is the secretary of the union at Patna branch of the employers and also an office assistant in the regional office, Patna of the employers. This letter is dated 2nd January, 1970 and is in respect of the dismissal of the affected workman with effect from 1st January, 1970. Through the letter the general secretary of the union contended that the action of the employers was not warranted and requested the regional manager to discuss the matter with the branch secretary at Patna of the union. That apart, Ext. W16 is a letter from the regional manager to the Assistant Labour Commissioner (C) Hazaribagh on the subject of industrial dispute regarding dismissal of the affected workman and it is dated 14th February, 1970. It is also proved by WW1. In this letter, Ext. W16, the letter, Ext. W15 is admitted. There is no rebuttal to this evidence though the regional manager is examined as MW3 and Ext. M15 was already on record by then. Further, Ext. W16 is referred to in the failure report, Ext. W3 which is marked on admission by the employers. Therefore, I do not find any force in this objection either.

5. The order of dismissal dated 26th December, 1969 is Ext. W2. It is stated therein that the affected workman was dismissed from service with effect from 1st January, 1970 as he was "held guilty of theft, fraud, misappropriation of company's properties" and that his "explanation submitted before the enquiring officer Shri A. K. Parbat was unsatisfactory and your behaviours during enquiry were also subversive of discipline which is also an act of misconduct." It is stated by the employers that A. K. Parbat, the superintendent of the regional office, Patna held the domestic enquiry and found the affected workman guilty as above. In respect of a domestic enquiry it is expected that a charge-sheet is served on the delinquent enumerating therein in full all the allegations constituting offence, sufficient time is given to him for submitting explanation to the charge-sheet, if the explanation is not found satisfactory, notice of enquiry is issued, the enquiry is held on notified date and time giving sufficient opportunity to the delinquent to cross-examine the management witnesses and to lead his own evidence and thereafter the enquiry officer submits his report giving his finding on each of the charges. But in the instant case it is difficult to understand what the charge-sheet was which contained all the offences mentioned in the order of dismissal. During the material time the regional manager at Patna was Lakshmi Narain Paul, MW3 and he was competent to appoint or dismiss the affected workman, an assistant of a branch office in the region. He had deputed A. K. Parbat, the superintendent, regional office, Patna, MW5 to make an enquiry against the affected workman. It is admitted by MW3 that no charge-sheet was issued to the affected workman before MW5 was appointed as the enquiry officer. Now the evidence of MW5 is that he reached Ranchi on 6th October, 1969 and went to the office of the branch at 10-30 A.M. MW4, the then branch manager and the affected workman were there. He told MW4 as well as the affected workman to make available to him all the papers required for his checking. He wanted in particular collection sheets, receipt

and receipt books relating to the current year and previous years. The affected workman placed before him the required papers. At this stage he handed over, Ext. W1 to the affected workman asking him to submit his explanation in writing. The enquiry officer, MW5 does not say that Ext. W1 was the charge-sheet, Ext. W1 is a letter dated 6th October, 1969 and addressed to the affected workman. The letter asked for immediate explanation from the affected workman on three complaints in respect of three receipts, receipt No. 8696 for Rs. 216.00, receipt No. 52700 for Rs. 805.00 and receipt No. BR-309897 for Rs. 565.00. The witness, MW5 continued to say that the affected workman went to his own room after receiving Ext. W1 but did not submit any explanation. Then the witness asked MW4 to fix up an engagement with MW1 and proceeded to inspect the office records. On 7th October 1969, when the witness came to the branch office at 10-30 A.M. the affected workman handed over to him. Ext. W4. Ext. W4 is a letter addressed by the affected workman to the witness, MW5 to produce the money receipts mentioned in Ext. W1 for verification to enable him to submit his reply to Ext. W1. The witness, MW5 continued to depose that along with MW4 and the affected workman he went to MW1 and made some enquiries and investigations and speaks about some admissions made by the affected workman. Then he says that after returning to the office he showed, Ext. M17 to the affected workman and the affected workman admitted the handwriting and signature in Ext. M17 as his. Ext. M17 is a receipt No. BR309897 for Rs. 565.00, mentioned as receipt No. 3, in Ext. W1. The witness says that earlier in the day the affected workman had admitted Ext. M6 as being in his handwriting and under his signature and had promised to submit his admission in writing after returning to the office but he did not submit it on 7th October, 1969. Ext. M6 is a receipt No. 522700 for Rs. 805.00, receipt No. 2 mentioned in Ext. W1. On 8th October, 1969, the witness, MW5 says that when he went to the office at about 10-30 A.M. the affected workman handed over to him Ext. W5. Ext. W5 is a letter from the affected workman to the witness, MW5 in continuation of Ext. W4. In this letter the affected workman says that the receipt No. 52700 for Rs. 805.00 and BR-309897 for Rs. 565.00 appeared as not signed by him. In short, out of the 3 receipts mentioned in Ext. W1, receipt No. 8696 was not shown to the affected workman in spite of his demand and the other two receipts are denied by the affected workman. The enquiry officer, MW5 says that on 8th October, 1969 he drew the memo of charges, gave it to the affected workman at about 12 noon and asked him to submit his explanation by 4-30 P.M. The memo of charges is annexed to the report of the enquiry, Ext. M13. The witness, MW5 proceeds to state that having received the memo of charges and having read it over, the affected workman left the office at 12-30 P.M. and did not return till MW5 left the office at 5 P.M. The memo of charges, annexure to Ext. M13 contained 4 charges, (1) that receipt Nos. 461146 to 461150, 524300, 29700 and 522700 were found as torne away from the relevant receipt books and no report in that regard was made, (2) that the original receipt No. 522700 was traced with the signature of the affected workman, with the date 6th September, 1968 for an amount of Rs. 805.00, (3) that receipt No. 309897 for Rs. 565.00 was produced by M/s. G.K.S. Central Cooperative Marketing Union, Amalgora granted as by the affected workman and (4) that a sum of Rs. 3.60 had been misappropriated by the affected workman by charging 20 paise postal charge while postal charge required in respect of each item was only 15 paise. Under each of these 4 charges the affected workman was asked to show cause as to why he should not be dismissed forthwith. As already pointed out above this charge memo was given to the affected workman at 12 noon asking him to submit his explanation by 4-30 P.M. on the same day, but according to MW5 the affected workman left the office at about 12-30 P.M and did not return. It can be seen that missing of several of the receipts from the respective receipt books mentioned as charge I was not mentioned in Ext. W1. Similarly, misappropriation to the extent of Rs. 3.60 paise mentioned as charge 4 also cannot found in Ext. W1 MW5 does not give any name to Ext. W1 but says repeatedly the annexure, Ext. M13 was the charge memo. The time to submit explanation to the charge memo was hardly 4½ hours. In S. Rangarajan V. Srirangam (AIR 1963 Madras 76) it is pointed out that reasonable opportunity does not mean only framing of charges and asking of explanation. In that case also it was only at noon time that the delinquent was informed that an enquiry would be held into the charges at 5 P.M. that day. The High Court considered that it was too brief a time to say that the delinquent had a reasonable opportunity to prepare himself for his defence. In the enquiry report, Ext. M13 it is only mentioned that the affected workman read the charges but did not accept them nor had he given any written explanation within the office hours. But the fact alleged by the enquiry officer that the affected workman left office at 12-30 P.M. and did not return that day is not mentioned in the report, Ext. M13. The enquiry officer, MW 5 says that apart from the charge memo, annexure to the Ext. M13, he did not issue any charge-sheet to the affected workman. He did not send the charge memo to the affected workman by registered post or peon book. This has to be stated because the affected workman has denied receipt of the charge memo and there is no evidence to substantiate the oral testimony of the enquiry officer, MW 5. Even if the delinquent did not submit any explanation in spite of receiving the charge memo, it does not follow that the charges should be treated as proved. These could be a notice of enquiry and if the delinquent chose to remain absent the enquiry could be conducted ex-parte before the findings were arrived at. But the evidence of the enquiry officer, MW 5 is that on 8-10-1969 itself he left Ranchi by the evening train and submitted the report, Ext. M13 to the regional manner, MW 3 on 11th October, 1969. So, admittedly, there was no enquiry at all into the chargememo, annexure to Ext. M13, and the dismissal order, Ext. M2 is based solely on the enquiry report, Ext. M13. Further, the enquiry officer, MW 5 was only an office superintendent and, but for the reason that was deputed by the regional manager, MW 3 he was not competent to make any enquiry against the affected workman. It is also not known to what extent MW5 was deputed. There are discrepancies in Ext. W1 and Ext. W13 and its annexure. MW3 as well as MW5 say that the deputation was by a written order. But the order is not produced. Considering all these circumstances I cannot hold that the domestic enquiry was proper or in accordance with the principles of natural justice.

6. The parties have led evidence independently of the domestic enquiry and from this evidence it is to be seen how far the allegations contained in the dismissal order, Ext. W2 are proved to warrant dismissal of the affected workman. In their statement of demands the employees had pleaded that the affected workman, as the assistant was incharge of all the records and receipt books of the branch office, that while checking the receipt books from 1967 and onwards it was found that receipt Nos. BR-461146 to 461150, BR-524300 BR-29700 and BR-522700 were torn off from the relevant receipt books. The complaint in respect of receipt No. BR-522700 was mentioned in Ext. W1 also and all the receipts and the case of the employers relating to them as stated above are charge No. 1 in the charge memo, annexure to Ext. M13. On behalf of the workmen no rejoinder to the statement of the employers was filed and the allegation was not traversed. During the material period, admittedly, MW2 was the branch manager of the employers at Ranchi. The affected workman, WW2 has admitted that missing of receipts from the receipt books is a serious matter. The then branch manager, MW2 has in his evidence that during the material period used and unused receipt books were in the custody of the affected workman as other

records and that they were kept by the affected workman in his own table drawer under his own lock and key. The affected workman, WW2 has not denied that the receipt books were in his custody. His only explanation is that several times he had informed the branch manager, MW2 about missing receipts in the receipt books and on 20th December, 1968 he had informed him also in writing, Ext. W18. The branch manager, MW2 has pointed out that the receipts in each book are in triplicate, the original is given to the parties, the second copy is given to the regional office at Patna and the third copy is retained in the book in the custody of the office assistant. Each book contains 100 receipt and the receipts have printed serial numbers on them. Ext. W18 is dated 20th December, 1968 and refers to missing of receipt No. 522700. The letter also refers to missing of temporary money receipts from No. 8696 to 8700 for which there was no charge. It does not refer to missing of other receipts which are mentioned in the charge memo, annexure to Ext. M13. There is no explanation when the missing of these receipts was detected and whether they were reported. The affected workman, WW2 concedes that he had detected missing of receipt No. 522700 in triplicate for the first time on 16th October, 1968 but he had reported about it through Ext. W18 only on 20th December, 1968 with explanation that he had reported it orally to the branch manager, WM2 earlier. But not even a suggestion in this regard was put to MW2 when he was in the witness box. Receipts No. 461146 to 461150 are missing in the receipt book, Ext. M19, receipt No 524300 from the receipt book, Ext. M20, receipt No. 29700 from the receipt book, Ext. M21 and receipt No. 522700 from the receipt book, Ext. M10 and these books clearly show that the receipts are torn off. When the affected workman was incharge of the receipt books and when the receipts were missing onus was lying on him to render satisfactory explanation. Barring however inadequate it may be, there is no explanation regarding missing of the receipt except as regards receipts Nos. 524300 and 522700. Admittedly, missing of the receipts is a serious matter and the affected workman cannot be exonerated from his responsibility.

7. The missing of the receipts cannot be treated lightly, as owing to carelessness of the affected workman. Charge No. 2 of the charge-memo, annexure to Ext. M13 was that the original receipt No. 522700, Ext. M6 was traced as having been passed to M/s. Agarwal Transport Co., Ratu Road, Ranchi, for Rs. 805.00, as premium under cover note No. C-20175. This allegation was made in the statement of the employers also. It was stated in the statement that having collected Rs. 805.00 from M/s. Agarwal Transport Co., Ratu Road, Ranchi on 6th September, 1968 in respect of cover note No. C-20175 he had shown in the receipt No. 522608, Ext. M10(a) in the receipt book, Ext. M10 as having received Rs. 730.00 under the same date, under the cover note and from the same party and showed in the collection statement as having collected only Rs. 730.00 and misappropriated the balance. The allegation of the statement was not traversed. Of course, as WW2 the affected workman has denied the receipt No. 522700, Ext. M6 as passed by him in his handwriting and under his signature and having collected Rs. 805.00 from M/s. Agarwal Transport Co. Ratu Road, Ranchi. According to him he had collected Rs. 730.00 from one B. B. Roy and passed the receipt bearing No. 522608, Ext. M10(a) in the receipt book, Ext. M10 and, as he had collected only Rs. 730.00 he had shown the same amount in the collection statement. The only point for consideration is whether the affected workman had collected Rs. 805.00 and passed the receipt, Ext. M6. Admittedly, Ext. M6 is the last receipt in the receipt book, Ext. M10 and the receipt book was in the custody of the affected workman. MW1 is B. D. Agarwalla who is the owner of M/s. Agarwal Transport Co., Ratu Road, Ranchi. His evidence is that on 6th September, 1968 the date of the receipt, Ext. M6, when he went to the office of the Insurance Society at Ranchi at about 10.00 A.M. the affected workman was alone there, that the witness paid Rs. 805.00 to the affected workman as premium for the renewal of insurance of his vehicle and that the affected workman gave him the receipt, Ext. M6 having written signed and having fixed the office seal on the revenue stamp on it in his presence. The witness further deposed that the affected workman himself went and delivered the certificate of insurance, Ext. M7 at his place on the same evening and when asked for the policy the affected workman told him that it had to come from Patna and as such it would take 2 or 3 months. The sum of Rs. 805.00 was the premium of insurance on valuation of the vehicle at Rs. 50,000. The witness went to the office of the society again on 6th September, 1969 for renewal of the insurance but on this occasion the affected workman was not there and the branch manager, MW4 told him that on 6th September, 1968 the vehicle was insured on its valuation at Rs. 40,000 and not Rs. 50,000. When asked for the policy, MW4 gave him a duplicate policy, Ext. M8 from which the witness came to know that on 6th September 1968 the vehicle was insured for the value of Rs. 40,000. On this the witness complained to the regional manager through his letter, Ext. M9. This was how the transaction as regards the receipt No. 522700, Ext. M6 came to the notice of the regional manager. MW1 is the person from whom the affected workman had received the sum of Rs. 805.00, wrote, signed and delivered to him the receipt, Ext. M6 and the insurance certificate, Ext. M7. MW5 is the office superintendent of the regional office of the employers at Patna and who was deputed by the regional manager, MW3 to make the enquiry. During the course of the investigation he, accompanied by MW4 and the affected workman went to MW1 on 7th October, 1969 at about 1 P.M. On this occasion MW1 produced before him the receipt, Ext. M6, the insurance certificate, Ext. M7 and the duplicate insurance policy, Ext. M8 and when confronted with these documents the affected workman admitted having received Rs. 805.00 and having given to MW1, the receipt, Ext. M6, in his handwriting and under his signature This evidence of MW5 is further corroborated by MW4. He also deposed that on 7th October, 1969 at about 1 P.M. MW5, the affected workman and himself went to MW1, that MW1 produced the receipt, Ext. M6, that the affected workman admitted having written and signed, Ext. M6 and given to MW1 and having received the sum of Rs. 805.00 mentioned in the receipt, Ext. M6 Thus, there is the direct evidence of MW1 from whom the affected workman received Rs. 805.00, wrote, signed and sealed the receipt, Ext. M6 and delivered it to MW1. There is the evidence of MWs 4 & 5 and also of MW1 in whose presence the affected workman has admitted having received the sum of Rs. 805.00 from MW1 and having passed to MW1 the receipt, Ext. M6 in his own handwriting and under his signature As against this evidence there is the solitary testimony of the affected workman, MW2 who had denied the entire transaction. The case of the affected workman, MW2 was that under the same date and in respect of the same insurance cover he had received a sum of Rs. 730.00 from one B B Roy and passed the receipt, Ext M10A. This B. B. Roy would have thrown sufficient light as regards the receipt, Ext. M10(a). But the workmen did not choose to examine the said B. B. Roy. Neither in the pleading nor in the cross examination any motive is suggested why MWs. 1, 4 and 5 should swear falsely against the affected workman Parties pleaded and led evidence in respect of some money found short during the period that MW 2 was the branch manager. Even if it is assumed that MW2 could have a grouse against the affected workman, no reason is even remotely suggested why MWs. 1, 4 and 5 should try to implicate the affected workman by stooping to give false evidence against him. On this evidence I have no hesitation to hold that on 6th September, 1968 at about 10 A.M. when MW2 was not there the affected workman had passed the receipt, No. 522700, Ext. M6 being the last receipt in the receipt book, Ext. M10 in his own handwriting and under his signature and under the seal of the office and received

a sum of Rs. 805.00 and having credited only Rs. 730.00 misappropriated the balance.

8. There is another receipt No. 309897, Ext. M17 which is alleged to have been passed by the affected workman for Rs. 565.00 to M/s. G.K.S. Central Cooperative Marketing Union, Amalgora and it is also alleged that the affected workman did not show receipt of the amount in the collection statement and misappropriated the same. In this regard there is the evidence of MW.4 who has identified the receipt, Ext. M17 as in the handwriting and under the signature of the affected workman. MW. 4 is the branch manager from 1st October, 1969 under whom the affected workman worked as the assistant till he was dismissed by the letter, Ext. W2 dated 26th December, 1969. In the cross-examination nothing is elicited to doubt that the witness could identify the handwriting or the signature of the affected workman. Of course, there is no direct evidence to establish that the affected workman had received the sum of Rs. 565.00 from M/s. G.K.S. Central Cooperative Marketing Union, Amalgora. There is also no evidence from which receipt book the receipt, Ext. M17 was removed. This evidence is not satisfactory to hold the affected workman guilty of misappropriation of the amount of Rs. 565.00. However, it creats a strong suspicion against him because it was issued on 6th December, 1968 when the affected workman was the Assistant in the branch office, it is a printed receipt of the employers and it bears also their seal. The handwriting and signature on the receipt, Ext. M17 appear to be similar to those of Ext. M6.

9. The 4th and the last charge in the charge memo, annexure to Ext. M13 is that while the postal charge for a book post was 15 paise the affected workman debited 20 paise for each post as regards the item shown in the charge memo, and misappropriated Rs. 3.60. It is admitted by the affected workman that the book posts mentioned in the charge memo were charged 20 paise, but it is stated that it was done under the verbal order of the then manager, MW.2 that when the postal stamps of 15 paise were not available the affected workman could use the postal stamps of 20 paise. In this regard no question is put to MW.2 and except the oral testimony there is nothing to prove the oral direction relied upon. I feel that the case of the employers is true. Thus, I find that the affected workman was guilty of theft, fraud and misappropriation. The employers were quite justified in refusing to have any more confidence and trust in the affected workman and in dispensing with his services.

10. As the result of my above discussion I find that the action of the management of The Hindustan General Insurance Society Limited in dismissing from service the affected workman, Sri P. K. Das, assistant in its branch office at Ranchi was amply justified and consequently, the affected workman is not entitled to any relief. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

Sd/- N. VENKATA RAO,
Presiding Officer.
Central Government Industrial Tribunal (No. 2)
Dhanbad.

[No. F.40/17/70-LR.I.]

New Delhi, the 23rd December 1971

S.O. 295.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Delhi in the industrial dispute between the employers in relation to the State Bank of India and their workmen, which was received by the Central Government on the 21st December, 1971.

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, DELHI.

PRESENT:

Shri R. K. Baweja, Central Government Industrial Tribunal, Delhi.

1st December, 1971

CG.I.D. No. 2 OF 1971

BETWEEN

The employers in relation to the State Bank of India.

AND

Their workmen.

Shri A. R. Lall—*for the Bank/Employers.*

Shri N. C. Sikri—*for the workmen/Association.*

AWARD

By S.O. No. 23/112/69/LRIII, dated 15th March, 1971, the Central Government in the Ministry of Labour, Employment and Rehabilitation (Deparement of Labour and Employment), was pleased to refer to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the State Bank of India (hereinafter to be referred as the Bank) and their workmen as represented by State Bank of India Employees Association, Post Box No. 212, New Delhi (hereinafter to be referred as the Association), in respect of the matter specified in the Schelule below:—

"Whether the action of the management of State Bank of India, in superseding Shri R. K. Verma, Clerk-typist in the matter of promotion as Stenographer at their Civil Lines Branch, Ludhiana, is justified? If not, to what relief is he entitled?"

2. The concerned workmen Shri R. K. Verma, joined the Abohar branch of the Bank on the 24th of October, 1961 as a typist-clerk and was confirmed on the 24th of April, 1962. He was transferred from Abohar branch to Ludhiana branch of the Bank on the 8th of July, 1967. In the statement of claim filed on his behalf by the Association, it was alleged that while he was serving at Ludhiana a vacancy of Stenographer occurred. But contrary to the conditions of service and practice that all promotions were to be made on the basis of seniority, it was stated, the Agent of the Ludhiana branch ignored his claim and gave officiating change to work as Stenographer to one Shri W. R. Dhir simply because the Agent wanted to show him undue favour. The workmen aggrieved by this action of the Agent made a representation on the 9th of May, 1968 but it was turned down and the Agent observed that the appointment of Shri Dhir as officiating Stenographer had been approved by the Head Office of the Bank. Against this alleged arbitrary decision of the authority concerned, several representations were made by the concerned workman to the grievance committee and then to the appellate authority and as nothing came out, the Association took up his case. The action of the Bank in allegedly superseding the workman and promoting a junior man by ignoring his claim of seniority was described by the Association as unjust, illegal, *mala fide* and arbitrary and it was prayed that the said order be set aside and necessary relief be afforded to the concerned workman.

3. The Bank in its written statement pleaded that it was not an industrial dispute as it had not been sponsored by any substantial number of employees of the Bank at Ludhiana, that the appointment of Shri Dhir to the post of Stenographer was not a promotion which could be challenged by the workman and that for that reason the reference was incompetent. It was further pleaded that the scale of pay of a typist-clerk and that of a Stenographer was the same exceptin that the latter got some allowance and so, it could no

be said that Shri Dhir though he was junior to the concerned workman was promoted by superseding the claim of the workman. On merits it was pleaded that as Shri Dhir held a certificate of Shorthand from Delhi Commercial University and was also found to be efficient and suitable, he was appointed in preference to the workman. The allegation that the appointment was *mala fide* or undue favouratism was shown to Shri Dhir was denied. A rejoinder was also filed by the Association in which the pleas raised by the Bank were controverted.

4. On the above pleadings of the parties, the following issues were framed:—

(1) Whether the dispute is not an industrial dispute for the reasons given in the written statement?

(2) Whether the Association has the *locus standi* to sponsore this case?

(3) As in the term of reference.

Issues No. 1 & 2:

5. The submission on behalf of the Bank was that as a substantial number of employees of the Bank at Ludhiana, who had substantial interest in the matter had not espoused the dispute, it was not an industrial dispute in spite of the fact that the Association which was a union of the establishment and of which the concerned workman was a member had done so. In this connection, my attention was drawn by Shri Lall, learned counsel for the Bank, to a dispute between Visalakshi Mills, Ltd. and Labour Court, Madurai (1962-II-LLJ-93). In that case, it was not shown that the dispute had the backing of a substantial or a considerable section of the workmen of the mills where the concerned workman was employed. There were 442 workmen in the mills out of whom 102 were members of the Madurai Textile Workers Union, which espoused the case of the concerned workman. It was not a union of the establishment of the mills but a general union at whose instance the industrial dispute concerning an individual workman was referred for adjudication. Under these circumstances, it was held by the Madras High Court, that from the mere fact that a general union at whose instance an industrial dispute concerning an individual workman was referred for adjudication had on its rolls a few of the workmen as its members, it could not be assumed that the individual dispute was converted into an industrial dispute. It was further held that in such a case not only should it be proved that the workmen who were members of the general union formed a substantial or a considerable section of the workmen of the particular mills, but also that in order to vest the dispute with the character of an industrial dispute, those members participated in or acted together and arrived at an understanding, either by a resolution or by other means, and collectively supported on the date of the reference the demand or the cause of an individual dispute. The same view was taken by the Madras High Court in 1965-I-LLJ-95 (Nellai Cotton Mills *vs.* Labour Court). The distinctive feature in the present case is that the Association is not a general union but is exclusively the union of the workmen of the establishment. The General Secretary of the Association, (Delhi Circle), Shri Kedar Nath Malhotra WW.2 appeared before me and stated that the Delhi Circle included branches of the Bank in the States of Punjab, Jammu and Kashmir, some 4/5 branches in Rajasthan, Himachal Pradesh and some in Western part of Uttar Pradesh. In December, 1969 the membership in the Association was 1,735 and he relied on a return which he submitted to the Registrar of the Trade Unions, Delhi in April, 1970 *vide* Ext. W/1. The concerned workman, according to the witness, is the organising secretary and member of this Association since 1959. The total number of employees in the Delhi Circle is about 5,000 out of which 1,735 are the members of the Association and other employees or some of them may be members of other unions of the Bank. The Tenth Annual Conference of the Association was held at Agra on the 2nd of October, 1969 in which delegates of the branches where this Association has members participated. There, in the general meeting the Association considered the matter of the concerned workman and passed a resolution in which the supersession of Shri Verma was noted with concern by the Association and the Central Committee was authorised to fight out his case if the Bank did not do justice to him *vide* Exts. W/3 and W/5. It is, therefore, obvious that the Association represents a substantial number of employees of the Bank in Delhi region and if it was authorised in a general meeting where the delegates from each branch attended, it can reasonably be said that the dispute was sponsored by a union which had the *locus standi* to do so. Fifty or fifty-five employees of the Ludhiana branch are members of the Association and they sent one delegate to attend that meeting. After going through this evidence I am satisfied that there is no force in the contention of Shri Lall when he contended that the Association had not the *locus standi* to sponsore the dispute pertaining to the concerned workman.

6. The next submission made by Shri Lall on behalf of the Bank was that the appointment to the post of Stenographer could not be said to be promotion and even if it was, it was within the discretion of the Bank to prefer a junior man instead of a senior one and that in this way it could not be said that the dispute was an industrial dispute. It is admitted by the counsel for the parties that the pay-scales of a typist-clerk and that of a Stenographer are the same but the Stenographer gets an extra allowance of Rs. 50 per month which I am told has now been raised to Rs. 55/- per month. During the course of arguments I enquired from Shri Lall, if a Stenographer could revert as a typist-clerk and he replied that once a typist-clerk was appointed as Stenographer he would continue as such or to go up but could not work as typist-clerk. If that is so, it is certainly a promotion because the post of a Stenographer carries with it a permanent allowance of more than Rs. 50 per month. He is not inter-changeable with a typist-clerk. Under these circumstances though the scales of pay may be the same but as the emoluments of a Stenographer are more than that of a typist-clerk, viewed in that context, it can be said that it is a promotional post. It is true that the promotion of an incumbent is in the discretion of the employer but if the allegation is that a promotee has been shown favouritism or the person who has been superseded has been victimised then certainly in an industrial adjudication this point can be considered and adjudicated upon. I, therefore, do not find any merit in this contention addressed on behalf of the Bank. The issues are, therefore, decided against the Bank.

Issue No. 3 (*Term of Reference*):

7. The case of the workman is that in the branch of the Bank, a senior most typist-clerk is promoted as a Stenographer provided he knows Stenography. In that connection, my attention was drawn to the statements of Sarvashri Krishan Kumar WW.1 and Kedar Nath Malhotra WW.2. The former stated that he joined the Bank as a typist-clerk on the 28th of December, 1960 and was promoted as Stenographer on the 10th of February, 1969 as he was the senior most typist-clerk at the time of promotion. He further added that he was not given any test before his promotion as Stenographer nor was he holding any Diploma in Stenography from any institution. Similarly, the other witness Shri Kedar Nath Malhotra at the time of his promotion as Stenographer was the senior most typist-clerk and he deposed that according to the practice in the Bank he was promoted as he knew Stenography. He was also not given any test nor was he asked to produce any Diploma though he had one. Shri R. K. Verma the concerned workman stated that before joining the Bank, he worked as steno-typist in the Co-operative Bank at Ferozpur for two years. When he left the service of that Bank and joined the State Bank of India, a certificate was issued to him by the manager of the Co-operative Bank wherein he testified that Shri Verma had been in his

bank for about two years as Steno-typist and had worked diligently and with due satisfaction. After joining the Bank, he made an application on the 20th of June, 1962 to the Secretary and Treasurer of the Bank in which he stated that he knew shortnand at a speed of 100 words per minute and that might be given a chance to serve the institution as a Stenographer *vide* Ext. W/6. In this application he mentioned that he worked as a Steno-typist in the Co-operative Bank, Ferozpur. It seems that the Bank enquired from him if he was prepared to be transferred as a Steno-typist at any of its branches and he replied in the affirmative on the 31st of July, 1962 *vide* Ext. W/8. Nothing came out and he made another application on the 22nd of June, 1964 to the Secretary and Treasurer of the Bank in which he again made a request that his case be considered with sympathy for his appointment as Stenographer. He stated that he was graduate, knew Shorthand, had worked in the Abohar branch of the Bank for three months as Stenographer and had also worked in the Co-operative Bank *vide* Ext. W/9. The fact that he worked as a Stenographer in the branch of the Bank at Abohar for short periods is amply borne out from the certificate Ext. W/11 which was issued to him by the Agent of that branch on the 10th of September, 1968. From all this evidence, it is obvious that the workman knew Stenography and had been working as such in the past. He had also a certificate dated 30th of September, 1959 from the Punjab Commercial College, Ludhiana that he had passed the test of Stenographer though no reference was made of this document in his applications to the Bank referred to above. No rules of the Bank were brought to my notice that a typist-clerk before his appointment as Stenographer should possess a certificate of Stenography from a particular institution. As stated by Sarvashri Krishan Kumar and Kedar Nath Malhotra, no test was taken in their case nor was a certificate insisted upon when they were promoted as Stenographers. Even Shri P. R. Kodange MW1 who was the Agent of the Ludhiana branch of the bank at the time when Shri Dhir was promoted did not say that he held any test before the appointment of Shri Dhir as Stenographer was made.

8. Shri W. R. Dhir was a Matriculate whereas the workman was a graduate. Shri Dhir admitted before me as MW2 that he joined the Bank's service in March, 1967 as a typist-clerk and matriculated in 1966 with first division. Shri Verma on the other hand joined the service of the Bank on the 24th of October, 1961. So, the seniority of Shri Verma is not in doubt *vis-a-vis* Shri Dhir. The Agent Shri Kodange stated that Shri Jai Bahadur Khanna was an officiating Stenographer. He was obviously senior to Shri Dhir and to Shri Verma, but Shri Verma was next in order of seniority to Shri Jai Bahadur. Shri Jai Bahadur was reverted as there was some case of disciplinary nature against him. Thereafter, the Agent deposed that he enquired from the branch if a qualified typist-clerk was avai able for appointment as Stenographer. He continued that he got a list of typists-clerks and in accordance with the seniority and suitability of the candates he appointed Shri Dhir though Shri Verma was senior to him. He admitted in cross-examination that there were five/six typists at that time and as he found Shri Dhir suitable, he appointed him in preference to Shri Verma. When further pressed as to what he meant by suitability, he replied that the candidate for the post of Stenographer should at least be Intermediate with a certificate of Stenography. If that is the test of suitability then Shri Dhir did not fulfill it as he was only a Matriculate. Shri Dhir, no doubt, possessed a certificate of Stenography from the Commercial University, Delhi. It is not a recognised University and is being run by some private person *vide* Ext. M/3. The production of a certificate, as already stated above and which the workman also obtained subsequently, was not one of the conditions of eligibility of a typist-clerk for his promotion as Stenographer. The only thing was that the person who was appointed should know Stenography to the satisfaction of the Agent. There is nothing on the record to suggest as to how the Agent was satisfied with the work of Shri Dhir as Stenographer and not with that of Shri Verma when he did not give any test to them. When asked as to how did he know that Shri Dhir was better than Shri Verma, he replied that he got a list prepared in the office but in the same breath he did not remember whether it was a verbal information given to him by the office about the seniority and suitability of the typists-clerk or it was in writing. So, from this statement it is quite clear that he did not apply any yardstick while selecting a typist-clerk for the post of Stenographer and more or less he depended upon his whims. He was not able to cite a single instance that any senior typist-clerk was ignored and not appointed a Stenographer previously. On the other hand, the workman produced two witnesses who categorically stated that the practice in the Bank had always been to appoint senior-most typists as Stenographers unless it was found that the typists-clerks were inefficient and did not know Stenography.

9. From the above facts, it is clear that the Agent deviated from this well-established practice and ignored the claim of Shri Verma without affording him an opportunity to prove that he was fit for the post of Stenographer and instead took a junior typist-clerk. Had he tested them or relied on any other data supplied to him by the office to show that there was justification for this departure, it could be said that his action was proper. The workman had been previously bringing to the notice of the authorities that he was a qualified Stenographer and had been working as such in the Co-operative Bank and in the branch of the Bank at Abohar. So, it cannot be said that the Agent and the office did not know that he was a qualified Stenographer. Therefore, from whatever angle the case is judged there can be no escape from the conclusion that the Agent for certain considerations, may be favouritism, preferred Shri Dhir to Shri Verma though the latter fulfilled all the conditions for appointment as Stenographer. This being so, the appointment of Shri Dhir, in my view was not *bona fide* and is set aside. The action of the Bank in superseding Shri Verma in the matter of promotion as Stenographer at their Civil Lines branch, Ludhiana was unjustified. It is directed that the Bank should give a chance to the concerned workman to work as Stenographer at Ludhiana unless it is satisfied for reasons to be recorded that he is not a fit person to be appointed as such. The award is made accordingly.

(Eleven pages)

1st December, 1971.

(Sd.) R. K. BAWEJA,
Central Govt. Industrial Tribunal, Delhi.

[No. 23/112/69/LRIII.]

New Delhi, the 24th December 1971

S.O. 296.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Bangalore in the industrial dispute between the employers in relation to the Canara Bank and their workmen, which was received by the Central Government on the 22nd December, 1971.

BEFORE THE INDUSTRIAL TRIBUNAL, BANGALORE

Dated, 14th December, 1971

PRESENT:

Sri Narayan Rai Kudoor, B.A. B.L., Presiding Officer

REFERENCE NO. 4 OF 1971 (CENTRAL)

I Party		*II Party*
Workman Sri K. S. Jayaram, No. 23, Dhancoti Line, Thimmiah Road Cross, Bangalore-1.	*vs.*	The Management of Canara Bank, Bangalore.

APPEARANCES:

For the I Party.—Shri A. Nagesh Rao, Advocate, Bangalore.

For the II Party.—Sri Tukaram S. Pai, Advocate, Bangalore.

REFERENCE:

Government Order No. 23/92/70/LRIII, dated 16th February, 1971.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Canara Bank and their workman, referred the said dispute to this Tribunal for adjudication as per the Order of Reference dated 16th February, 1971, in exercise of powers conferred by Section 7A, and clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), on the following dispute:—

"Whether the action of the management of Canara Bank Bangalore in terminating the services of Sri K. S. Jayaram, Peon, with effect from the 16th February, 1968 is justified? If not, to what relief is he entitled?"

On receipt of the above reference, it was taken on file of this Tribunal as Central Reference No. 4 of 1971. Notices were issued to both the parties. In pursuance of the notices, the parties entered appearance and filed their respective claim statements relating to the points of dispute scheduled in the Order of Reference. Since the parties filed a joint memo reporting settlement of the dispute out of court, I feel it unnecessary to refer in detail the points urged by either parties in their respective claim statements.

On the pleadings, the following issues were framed in addition to the point of dispute scheduled in the Order of Perference:—

1. Whether the I Party has misappropriated a sum of Rs. 200 belonging to Miss Nandini Bai, an employee of the II Party? If so,

Whether it amounts to misconduct liable to be punished under Chapter XI, Regulation 3, Clause (m) of the Service Code of the Bank?

2. Whether the dismissal of the I Party is wrongful and illegal for the reasons urged by the I Party in para 4 of his statement?
3. Whether the II Party has conducted due and proper enquiry before dismissing the I Party?
4. Whether the enquiry held by the II Party is biased and one-sided and opposed to the principles of natural justice?
5. Whether the II Party acted *mala fide* in passing the impugned order of dismissal?
6. To what reliefs, the parties are entitled?

During the pendency of the enquiry of the above dispute the parties filed a joint memo dated 8th December, 1971 requesting to reject the reference, as they have settled the matter covered under the Order of Reference, out of court.

In view of the said memo, I pass an Award rejecting the reference.

The parties are directed to bear their own costs.

(Sd.) NARAYAN RAI KUDOOR,
Presiding Officer,
Industrial Tribunal, Bangalore.

[No. 23/92/70/LRIII.]

S. S. SAHASRANAMAN, Under Secy.

(Department of Labour and Employment)

New Delhi, the 21 December 1971

S.O. 297.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, No. 2, Bombay, in the industrial dispute between the employers in relation to the management of Messrs J. Chaswan and Company, Bombay and their workmen, which was received by the Central Government on the 8th December, 1971.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

REFERENCE NOS. CGIT-2/2 OF 1970 AND CGIT-2/10

Employers in relation to the management of Messrs J. Chaswan and Company, Bombay

AND

Their workmen

PRESENT:

Shri N. K. Vani, Presiding Officer

APPEARANCES:

For the employers—Shri M. K. Damley, Labour Consultant.

For the workmen—(i) Shri H. K. Sowani, Advocate.

(ii) Shri R. A. Pandit, Assistant Secretary, Transport and Dock Workers' Union, Bombay.

INDUSTRY: Ports and Docks STATE: Maharashtra.

Bombay, dated the 2nd December, 1971

AWARD

By order No. 28/47/69-LWI. III/Fac. II dated 30th December, 1969 the Central Government in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the Management of Messrs J. Chaswan and Company, Bombay and their workmen in respect of the matters specified in the schedule as mentioned below:—

"SCHEDULE

1. Whether the demands raised by the Transport and Dock Workers' Union, Bombay against the management of Messrs. J. Chaswan and Company, Bombay-10, in respect of revision of wages, stream allowance, holiday, leave, issue of Photo-Identity-Cards and Attendance-Cards, extension of the benefits of the recommendations of the Central Wage Board for Port and Dock Workers to the workmen of the company are justified? If so, to what relief the workmen are entitled?
2. Whether the termination of services of Shri Rajaram Surajbali, Permanent Carpenter, by the management of Messrs J. Chaswan and Company, Bombay-10 is justified? If not to what relief the workman is entitled?
3. Whether the retrenchment of the following 30 workmen by the management of Messrs J. Chaswan and Company, Bombay-10 is justified? If not, to what relief the workmen are entitled?

1. Shri Prahlad Katkar.
2. Shri Sirimandaji Nalade.
3. Shri Deep Narayan.
4. Shri Rajeev Yadav.
5. Shri Chhedilal.
6. Shri Desai Ram.
7. Sabir Ebrahim.

8. Shri Paras Nath.
9. Shri Santan Lobo.
10. Shri Jamuna Prasad.
11. Shri Ram Prakash.
12. Shri Ramdular Updhya Lohar.
13. Shri Jagatnarayan Upadhaya.
14. Shri Rajpat Misra.
15. Shri Ramkaran Misra
16. Shri Kamlaprasad Dube.
17. Shri Ramsajivan Kewat.
18. Shri Rajpat Kewat.
19 Shri Mithailal Shukla.
20. Shri Gyandatt Dube.
21. Shri Ramlakhan Updhya.
22. Shri Ramnagine Chauhan.
23. Shri Trilokinath Misra.
24. Shri Abdul Shahemed.
25. Shri Ramnihor Misra.
26. Shri Raghunath Shyamrao Jadhav.
27. Shri Marinandan Singh.
28 Shri Lalbihari Misra.
29. Shri Adeshkumar Tiwari.
30. Shri Taarknath Dube."

2. By order No. 73/5/70-P & D dated 17th April, 1970 the Central Government in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), referred to the Central Industrial Tribunal, Bombay for adjudication an industrial dispute existing between the employers in relation to Messrs J. Chaswan and Company, Bombay-10 and their workmen in respect of the matters specified in the Schedule as mentioned below:—

"SCHEDULE

Whether the retrenchment of the following 10 workmen by the management of Messrs J. Chaswan and Company, Bombay-10 is justified? If not, to what relief the workmen are entitled?

1. Shri Vishvanath Beni Madhav.
2. Shri Ram Nain Brij Mohan.
3. Shri Ram Beni Mahadev.
4. Shri Jetha Shankar Misra.
5. Shri Ramkant Parasnath.
6. Shri Baburam Suraj Bali.
7. Shri Sashikant Ramachandra Gangadhar.
8 Shri John Braganza.
9. Shri Ram Murat Kashinath Panday.
10. Shri Jogeshwar Ramayi."

3. During the pendency of the reference before the Central Government Industrial Tribunal, Bombay (referred in para 2 above) the parties moved the Central Government for its transfer On account of this, by Order No 73/5/70-P & D dated 10th September 1970, the Central Government in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) transferred this reference to this Tribunal No. 2 Bombay, where it was numbered as Ref. No. CGIT-2/10 of 1970

4. After the receipt of the reference, notices were issued to the parties At the instance of parties both the reference i.e. Ref. Nos. CGIT-2/2 of 1970 and CGIT-2/10 of 1970 were heard together and disposed of by common judgement

5. In pursuance of the notice issued to the parties for filing written statement, they have filed their written statements

6 Shri Jagdish Ram Diwan, partner, M/s J Chaswan and Company, Bombay (hereinafter referred to as 'the company') has filed preliminary objection at Ex. 1/E on 15th June, 1970. The company has also filed written statement at Ex. 3/E raising its contentions in respect of all demands on merit in respect of both the references on 9th December, 1970.

7. According to the Company;

(i) The company does not have any workshop of its own. Whenever there is any need the company gets the jobs made from others. It is a fact that it gets minor repairs to ships and vessels done while at sea or in stream.

(ii) This Tribunal has no jurisdiction to hear this reference.

(iii) The company does not fall in the jurisdiction of the Central Government but it falls within the jurisdiction of the Maharashtra State Government. It is only the Maharashtra State Government that can refer the dispute to its Industrial Tribunal.

(iv) Industrial Disputes Act, 1947 is not applicable to any dispute between the company and its workmen even if there be any dispute.

(v) The company suspended its activities since 26th May, 1970 retrenching all the workmen. It has skeleton staff of clerks and supervisors who are not covered under this reference. Hence the reference does not survive in respect of demands pertaining to wage scales and working conditions.

(vi) As the company was not working in any premises it is not covered under the provisions of any Act.

8. The written statement filed by the company at Ex. 3/E, 9th December, 1970 is Annexure X to this Award.

9. The Asstt. Secretary, Transport and Dock Workers' Union, Bombay (hereinafter referred to as the Union) has filed written statement at Ex 2/W, which is marked as Annexure 'Y' to this Award.

10. The Asstt. Secretary of the Union Shri R. A. Pandit has examined himself at Ex. 23/W and one of the employees Shri Jethashankar Misra at Ex. 24/W. The Union has produced documents at Ex. 6/W to 7/W, 9/W to 22/W and 25/W to 28/W. Copy of Award in Ref. No CGIT-41 of 1964 has also been produced by the Union.

11 The company has examined its partner Shri Jagdish R. D Diwan at Ex. 8/E and produced two documents at Ex. 4/E and 5/E.

12. From the pleadings and arguments advanced before me the following points arise for decision in this reference.

(i) Whether the dispute relates to Major Port?

(ii) Whether the workmen in dispute are dock workers as defined under the Dock Workers (Regulation of Employment) Act, 1948?

(iii) Whether the Industrial Disputes Act applies to the present case?

(iv) Whethehr this Tribunal has jurisdiction to entertain the references, viz., CGIT-2/2 of 1970 and CGIT-2/10 of 1970?

(v) Whether the retrenchment of 30 employees mentioned in Demand No. 3, in the Schedule to order in Ref. No. CGIT-2/2 of 1970 and the 10 employees mentioned in the demand in Schedule to order in reference No. CGIT-2/10 of 1970 by Messrs. J. Chaswan & Co. Bombay is justified?

(vi) If not, to what relief are the workmen entitled?

(vii) Whether the termination of services of Shri Rajaram Surajbali, permanent carpenter, by the management of Messrs J. Chaswan and Co., Bombay is justified?

(viii) If not, to what relief thhe workman is entitled?

(ix) Whether the demands raised by the Transport and Dock Workers' Union, Bombay against the management of Messrs. I. Chaswan and Co., Bombay, in respect of revision of wages, stream allowance, holidays, leave, issue of Photo Identity cards and Attendance Cards, extension of the benefit of the recommendations of the Central Wage Board for Port and Dock workers to the workmen of the company is justified?

(x) If so to what relief these workmen are entitled?

(xi) What order?

13. My findings are as follows:—

(i) Yes.

(ii) Yes.

(iii) Yes.

(iv) Yes.

(v) No.

(vi) As mentioned in the order.

(vii) No.

(viii) As mentioned in the order.

(ix) As mentioned in the judgment.

(x) As mentioned in the judgment.

(xi) As per order.

REASONS

Points Nos. (i) and (ii)

14. The Union's case in respect of point No. (i) and (ii) is given in para 1 of its written statement Ex. 2/W. It is as follows:—

"The company was a proprietory concern of a long standing with Shri J. R. Diwan as its sole proprietor. In the year 1960, it was however, converted into a partnership concern with Messrs. J. R. Diwan, B. R. Diwan and Smt. Kamaladevi Diwan as partners. The establishment of the company is situated within the port area and in fact the land on which the factory is situated belongs to Bombay Port Trust. The company is primarily engaged in the ship repairing jobs in the docks, and consequently their workmen are working in the dry docks situated with the port limits. The workmen are also required to work in the mid-stream if any minor repairs to the ships are required to be done in the mid-stream. They also are engaged on ships berthed at the wet docks for repairs. On occasions the workers are required to go from the docks to the factory of the employer which is also situated on the Port Trust Land, for the purposes of repairs to plates and other parts of the ships which are required to be done at the workshop. The factory is not manufacturing any new article or part required for repairing the ship, but it is engaged only in repairing the parts of the vessels which required repairs The workmen concerned in this dispute are engaged only for such repair jobs, and are not required to work in the workshop for the purposes of manufacturing any new article or part. Thus, the intrinsic and the main work of the company is the work of ship repairs which must be carried on in the port and in the case of the company in Bombay it is carried on in major port. The workmen who are working on the repair jobs in connection with the ship have to necessarily observe the rules of the port and Dock authorities. When the repairing work of the vessel is in progress the loading and unloading work of cargoes cannot take place, because the vessel is defective for receipt of cargoes. Unless, therefore, the repairing of the ship is completed the vessel is unable to load cargo and it is also not able to move out of the Port. The workmen who work on the repairing jobs to the ships are thus very much concerned in connection with the preparation of ships and vessels for receipt or discharge of cargoes or leaving port. In the event of the strike by the workmen of the company while the repairing work is in progress in the Docks, the vessels will be unable to leave the port and will continue to occupy berths so long as repairing work is not completed. It will thus, affect the working of the port. These workers are, therefore, dock workers within the meaning of the definition of the said term as given in the Dock Workers' (Regulation of Employment) Act, 1948. Moreover the workmen have been issued Photo Identity cards by the Bombay Port Trust on the recommendations of the company with a view to facilitate lawful entry of the dock workers in the docks. Thus, the work undertaken by the company is in relation to the activities concerning the major Port."

15. The company admits in the written statement Ex. 1/E that it gets the minor repairs to ships and vessels done while at sea or in stream.

16. Shri Jagdish R. D. Diwan, Ex. 8/E partner of the company admits in his evidence before me that ship repairing work was done only in the stream or in the wet docks.

17. In view of the admission given by Shri Diwan in his evidence before me and in the written statement Ex. 1/E there could not be any doubt that the ship repairing work which the company was carrying on is to be done in the Port, *i.e.*, in the stream or in the wet docks.

18. Shri Damley for the company contends that ship repairing does not amount to preparation of ships, that ship repairing activity has no concern whatsoever with the work in the dock relating to loading and unloading and that on account of this it cannot be said that the employees in question are Dock workers and that the work which they were doing relates to major Port. I am unable to accept this contention.

19. The definition of 'dock worker' given in Section 2(b) of the Dock Workers (Regulation of Employment) Act, 1948 is as follows:—

"'Dock worker' means a person employed or to be employed in, or in the vicinity or, any port on work in connection with the loading unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port."

20. In view of this definition the employees in question will be dock workers provided they are concerned with the work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port.

21. In the present case the employees are admittedly doing ship repairing work which can be carried on only in the port area (*i.e.*, in Bombay major Port area). Repairing ships either in the mid-stream or in the wet docks amounts to working in the vicinity of the port *i.e.*, major port of Bombay.

22. When the employees in question are repairing ships or vessels loading and unloading of cargo on the ship cannot take place. Unless the repairing of the

ship is completed it will not be allowed to load cargo and move out of port. Hence the workmen who work on repairing jobs to the ships are much concerned in connection with the preparation of ships or vessels that leave the port. If the workmen doing the repairing work go on strike the vessels will be unable to leave the port and they will have to occupy berths so long as repairing work is not over. Hence it can be said that the employees in question are concerned with the work in connection with the preparation of ships and vessels for receipt or discharge of cargoes or leaving port. They are, therefore, dock workers within the meaning of Section 2(b) of the Dock Workers (Regulation of Employment) Act, 1948.

23. As the workmen have been issued Photo Identity cards by the Bombay Port Trust on the recommendations of the company with a view to facilitate lawful entry in the docks, the work undertaken by the company *i.e.*, ship repairing, is in relation to the activities concerning the work of major port of Bombay. Hence the dispute between the employers and the employees in the present case relates to Major Port. Hence my findings on point No. (i) and (ii) are as above.

Point Nos. (iii) and (iv)

24. Shri Damley for the company contends that there cannot be any industry without premises and as the employees in question are working on the ship and not on the premises there was no industry. If there was no industry, the employer is not an industrial employer. Therefore, there is no industrial dispute. If there is no industrial dispute this Tribunal has no jurisdiction to entertain this reference. This contention is misconceived and cannot be accepted.

25. The definition of 'industry' given in the Industrial Disputes Act, 1947 in Section 2(j) is as follows:—

> "'industry' means any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen."

26. It is clear from the definition of 'industry' that it nowhere mentions that it should be carried on in any premises. In view of this, the contention raised by Shri Damley that as the employees were not working on any premises no Act such as Shops and Establishment Act, Factories Act, and Merchant Shipping Act, would apply to the company, cannot be accepted. The present case is under the Industrial Disputes Act, 1947 and not under the Shops and Establishmbent Act or under Factories Act or under Merchant Shipping Act. Hence it is only the Industrial Disputes Act that will apply to the present case. Hence it cannot be said that there is no 'industry' in the present case simply because the employees were working on ships and not on the premises.

27. Shri Damley for the company contends that the company in question is not the employer within the meaning of Section 2(g) of the Industrial Disputes Act, 1947 and that on account of this there can be no industrial dispute between the company and the employees. He further contends that the company is a private employer carrying on business in the dock or port area it does not come under the purview of the Central Government and that on account of this, the Tribunal has no jurisdiction. In support of the above contentions Shri Damley relies on Section 2(g) of the I.D. Act.

28. Section 2(g) of the I.D. Act, 1947 is as follows:—

"(g) 'employer' means—

(i) in relation to industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

29. The definition of the 'employer' given in Section 2(g) is neither exhaustive nor inclusive. The word 'employer' is not specifically defined but merely indicates who is to be considered an employer for the purposes of an industry carried on by or under the authority of a department of Goverment and by or on behalf of a local authority. This definition is, therefore, intended only to operate in relation to an activity properly describable as an industry. Rule 2(g) of the Industrial Disputes (Central) Rules 1957, prescribes that with reference to clause (g) of Section 2, in relation to an industry carried on by or under the authority of a department of the Central Government or State Government, the officer-in-charge of the industrial establishment shall be 'employer' in respect of that establishment and in relation to an industry concerning railways carried on by or under the authority of a department of the Central Government, the officers mentioned in sub-clauses (a), (b) and (c) of Rule 2(g) (ii) shall be 'employer'.

30. There can be no doubt that the definition of employer given above only indicates as to who is to be considered as an 'employer' for the purpose of an industry carried on by or under the authority of a department of Government and by or on behalf of a local authority only.

31. In respect of a dispute relating to a major port the appropriate Government is the Central Government as mentioned in Section 2(a)(i) of the Industrial Disputes Act, 1947.

32. In view of this specific provision, it is immaterial whether the company in question is a private company and whether it is not the employer within the definition of Section 2(g) of the I.D. Act, 1947. As the dispute relates to a major port and as it is an industrial dispute within the meaning of Section 2(k) of the I.D. Act, the Central Government is the appropriate Government to refer this dispute to this Tribunal. This Tribunal has therefore, jurisdiction to entertain this dispute. Hence I am unable to accept the contention raised by Shri Damley as referred to above.

33. In short, considering the arguments advanced by both the parties and the material on record I am of the view that all the preliminary objections raised by Shri Damley in this case must fail. Hence my finding on point Nos. (iii) and (iv) are as above.

34. *Point Nos. (v) and (vi)*

As regards this point the Union contends in its written statement Ex. 2/W paras. 21 to 27 as follows:—

35. According to the Union:

(i) In the first order of Reference 30 workmen are covered and in the second order of reference 10 workmen are covered, thus in both references together the demand challenging retrenchment is in respect of 40 workmen.

(ii) Some of these workmen have been served with notices dated 14th April, 1969 by which they were informed that since there was slackness in work it was decided to terminate the services of the workmen with immediate effect. They were neither given one month's notice nor were they given wages in lieu of notice.

(iii) They were not given any retrenchment compensation under the I.D. Act in respect of their past services. On account of this their retrenchment is illegal and liable to be set side.

(iv) Reasons for retrenchment given by the employers is slackness in work. The work of ship repairing still remains as usual and this employer could have got sufficient work thereby continuing their employment.

(v) The real reason behind the retrenchment is however, different. The employer had engaged these workmen on one ship for repairs. When the work was gone to end by 10th April, 1969 the company had called many workmen and personally told them that if all the workmen did not resign from the Union, they would have to go out because in that event the company would not take up any new contract for ship repairs. This threat of the company was a clear act of victimisation and the action of retrenchment taken by the management cannot therefore sustain. Company has not followed the principle of last come first go while retrenching the workers. On this ground also the retrenchment is bad in law. They be reinstated and paid salaries for the intervening period.

36. The company's defence in respect of these two points as taken in the written statement Ex. 3/E is as follows:—

37. According to the company;

(i) There was retrenchment of some of the workmen on 14th April 1969. The company offered them their legal dues, but perhaps under the advice of the Union, the workmen refused to accept the same. Some workmen who were temporary were not entitled to notice pay and as such it was not offered. It has followed the provisions of Section 25F of the Industrial Disputes Act, 1947 *in toto*. The retrenchment be upheld.

(ii) The company was not able to secure work immediately at the rate that would suit the company. There may be ship repairing work all along, but the question is whether an employer can afford it at the rates offered to him. There is keen competition among contractors. This company is known for giving quality work. It could not secure work on its terms. It also came into financial difficulties due to non-recovery of its bills. It could not think of new business. Moreover ship repairs is not the main line of work. The consultation work is the main business.

(iii) Retrenchment of workmen is not on account of victimisation. Plea of victimisation can only be taken if there is dismissal or discharge or any other punishment. Retrenchment is no punishment. It is for the company to decide to what extent the strength of the workmen should be reduced. The Union has no right to question it. Even the Tribunal will not be able to question the right of the employer as long as the management acts in the frame work of the labour enactments.

(iv) In this case payments were offered to the employees. When they refused to accept notice it was put up on the doors of the entrance for the office for the information of the employees It had also issued individual notices to the workmen and intimated to the workmen who were on leave that they would be retrenched after they would be resumed.

(v) The company has not asked the workmen to leave the Union, and given threat that the company would not take fresh contract if they would not leave the Union.

(vi) The Union has mentioned in para. 25 that some workmen were not given notices. Each and every workman was given notice individually and payments offered to him

(vii) As regards the 10 workmen involved in reference No. CGIT-2/10 of 1970 only 5 belong to it while the remaining 5 were not in its service. Hence reference in respect of these 5 employees is null and void.

38. As regards the company's contention that out of 10 employees involved in Ref. No. CGIT-2/10 of 1970, 5 employees *viz.*, S/Shri Balbusan Surojbali. Shashikant Ramchandra, John Braganza, Ram Marut Panday and Jageshwar Bhagat were not in its service and were in the service of some other employer, it cannot be accepted. Shri Jagdish R. D. Diwan a partner of the company has given evidence at Ex. 8/E. He nowhere says in his evidence before me that these 5 employees are not in the service of the company and they are in the service of some other employer. There is no documentary evidence on record from which it can be inferred that the 5 employees out of the 10 employees in reference No. CGIT-2/10 of 1970 are not in the service of the company Reference in connection with the dispute regarding retrenchment of the 10 employees has been referred to this Tribunal. It clearly mentions that the industrial dispute exists beween the employers in relation to Messrs. J. Chaswan and Company, Bombay and their workmen. In view of this it will-have to be taken that *prima facie* all these 10 employees involved in this reference are in the service of Messrs J. Chaswan & Company, Bombay. I, therefore, negative the contention raised by the company in its written statement Ex. 3/E in respect of 5 employees as not being its employees.

39. The Union contends that the company retrenched them with a view to victimise them because the company did not like their becoming members of the Union. It is contended that there was no slackness of work, that the company intentionally did not accept new work and retrenched the employees with *malafide* intentions.

40. The company in its written statement Ex. 3/E contends that as it was not in a position to secure work and as there were no work for the employees to give it retrenched the employees. Moreover, it was also in financial difficulties as it has toreosort to legal remedy to recover the amount running in few lakhs.

41. In the two retrenchment notices Ex.13/W dated 14-4-1969 and Ex. 10/W dated 28-5-1969, it has been mentioned that as there was no work since 10th April, 1969 and as there was no chance of getting new work in the near future the employees were retrenched.

Shri Jagdish R. D. Diwan, a partner of the firm, Ex. 8/E says in his evidence as mentioned below:—

"As for work is concerned I was doing very well. As I did not receive bills from various owners of the ships which I had repaired, I had to borrow money.

I repaired the Malabar Steamship Company's ships. My bills for these repairs for the period of three years amounted to about 2 lakhs seventy five thousand. As I did not receive the bills from the company, I had to approach the High Court. (Ex. 4/E and 5/E).

For want of funds and on account of non-recovery of my bills I have to stop my work. My employees had filed applications agaist me for getting over time. All those applications were dismissed.

I have no intention to restart my work."

42. From the evidence of Shri Diwan, Partner of the company, there cannot be any doubt that for want of fund and on account of non-recovery of his bills he had to stop his work. He nowhere mentions that he was not getting the work and that for want of work he had to stop his business. In view of this evidence I am unable to accept the contention of the company raised in the written statement Ex. 3/E and in the two notices Ex.13/W and 10/W that there was slackness of work and that the company had no chance of getting new work. I am convinced that reasons given in the retrenchment notice for retrenching the workmen for want of work do not appear to be genuine.

43. Shri R. A. Pandit, is the Asstt. Secretery, Transport and Dock Workers' Union, Bombay. He has examined himself on behalf of the employees at Ex. 23/W.

44. According to him:

"Upto 10-4-1969 the company had one vessel under repair in the Docks The employees were working on that vessel day and night without rest for repairing the vessel The company's reason for retrenching the employees on the ground of slack of business is not correct. The management said that they would not take any contract for repairing ships with a view to teach the employees a lesson for having joined the Union. Ship repairers like Chaswan & Co have to take permit or license from the Bombay Port Trust for carrying out repair work in the dock or in the stream. The Chaswan & Co has not returned the permit or license to the Bombay Port Trust.

The reason for terminating the services of the employees is victimisation for their joining the Union . . . "

45. Shri Pandit also says in his evidence that on enquiry he has learnt that the company has not returned the permit or license to the Bombay Port Trust Shri Jetha Shankar was informed by the management that they would not take new contract with a view to teach the employees for joining the Union.

46. Shri Jetha Shanker Misra Ex 24/W also speaks about the intention of the company in retrenching the workmen.

47. His evidence is:—

"The company was informed by the Union that its employees had become members of the Union

Shri Jagdishchandra Diwan, Proprietor of the Company called me and asked me as to why I and others had become the members of the Union I informed him that the employees working in the company for more than 12 years have not been getting any facilities. The company was not listening to our grievances On account of this the employees become the members of the Union. Shri Jagdishchandra Diwan informed me that what I was getting was sufficient and I would not get anything more either through the Union or the Court Shri J Diwan asked us to leave the Union otherwise all the employees would be removed without getting anything I informed this incident i.e. talk between me and Shri J Diwan to Shri Kulkarni. On account of this Shri Kulkarni sent a letter to the Company.

Thereafter Jagdishchandra used to give threat to the employees whenever he used to come to the ships

The company dismissed Shri Rajaram Suraibali Carpenter first, who was beaten by both brothers namely Jagdishchandra Diwan and Baldeo Diwan Thereafter 11 employees were removed on 11th April, 1969, with a view to create terror among the employees.

As some employees were removed from service the Union moved the conciliation proceedings Members of the Union did not leave the Union even after this victimisation. All the remaining employees working in the company including me were removed from service in May 1969

It is not true that the company removed the employees for want of work The company had enough, work. The reason given by the company that it had no work for removing the employees is false On occasions we had worked day and night also.

The main reason is that the company removed the employees because they became the members of the Union Even today the Proprietor of the company says that he would take the employees in service if they leave the Union."

48. From the evidence of S/Shri Pandit and Jetha Shanker Misra, it appears that slackness of work as reason for retrenchment of employees by the company was not genuine reason and that there was other motive behind this retrenchment.

49. From the evidence of Shri Pandit, Ex. 23/W, it appears that the employees working in Messrs. Chaswan & Co., Bombay became the members of the Transport and Dock Workers' Union Bombay some time in February 1969. Thereafter the Union informed the management that the workmen in question became the members of the Union. The Union also submitted a charter of demands on behalf of the workmen on the company, in respect of their conditions of service (vide Ex. 21/W dated 19th March, 1969.). On receipt of the charter of demands by the company, it started harassing the employees. In this connection the Union made complaints to the Police (vide copy of letter Ex. 19/W dated 22nd March, 1969, addressed to the Deputy Commissioner of Police, C.I.D.-Labour Branch, Bombay) and letter Ex. 20/W dated 21st March, 1969, addressed to the Inspector of Police Sewree Police Station, Bombay.

50 On receipt of reply from Messrs Chaswan & Co., Bombay regarding charter of demands, the Union made report to the Asstt. Labour Commissioner (C), Bombay-1 (vide Ex. 17/W dated 1st April, 1969). Later on retrenchment of 40 employees were made from time to time If the retrenchment of 40 employees is considered in the light of the facts referred to above regarding the employees joining the Union and submitting the charter of demands in connection with their conditions of service it will be clear that the intention of the company in retrenching the employees was not fair and bona fide.

51 The Union contends that their retrenchment was not proper and legal because the provisions of Section 25F were not complied with In the first place the retrenchment notice Ex. 13/W dated 14th April, 1969, in respect of 11 employees out of the 30 shows that their services were terminated with immediate effect and that they were to be paid their legal dues in the office of the company. It does not specifically mention on what date the legal dues were to be paid. In any case there could not be any doubt that their legal dues were to be paid after the actual retrenchment which was to take place with immediate effect and not prior to or on the date of retrenchment

52. Notice Ex. 10/W dated 28th May, 1969, mentions that the employees mentioned therein would be retrenched with effect from 29th May 1969 and that all their dues as per Section 25F of the I.D. Act 1947, would be paid on Monday the 2nd June, 1969, at the office of the factory at 11 a.m. There can be no doubt from this retrenchment notice that compensation was not paid to these employees on the date of retrenchment but it was to be given to them on 2nd June, 1969, i.e., a few days after the retrenchment.

53. As per provisions of Section 25F no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice and that the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen

days' average pay for every completed year of continuous service or any part thereof in excess of six months.

54. In the present case the retrenchment compensation has not been paid at the time of retrenchment. Hence the provisions of Section 25F have not been complied with in this case. It is clear from the two notices Ex. 10/W and 13/W referred to above that the employees were not given one month's notice before retrenchment. It is not mentioned in the notices that they were to take away one month's wages in lieu of notice. It is not the case of the company that in this case there was an agreement specifying a date for the termination of service of the employees between the company and the employees. In the absence of such agreement it was necessary for the company to give either one month's notice in writing indicating the reasons for retrenchment or to pay one month's wages in lieu of notice. As the company has failed to comply with this provisions of Section 25F(a), the retrenchment is illegal and invalid.

55 As regards the 10 employees involved in Ref. No. CGIT-2/10 of 1970, notices are not on record. The company has not adduced any evidence to show that one month's notice was given to each one of them or one month's wages in lieu of notice were given to each one of them on or before the date of retrenchment. The company has also not adduced any evidence to show that the employees were given retrenchment compensation at the time of retrenchment.

56. One of the 10 workmen involved in Ref. No. CGIT-2/10 of 1970 Shri Jetha Shanker Misra has been examined at Ex. 24/W. According to him "he was served with the notice of removal by the company on 26th May, 1969. In the morning, this notice was also put up on the Notice Board. The company offered the wages for the work done but he did not accept the same. The company did not offer one month's notice pay"

57. From the evidence of Shri Jetha Shanker Misra referred to above, it is clear that he was not given one month's notice before retrenchment. He however makes a confusion about one month's notice pay. At one stage he says that there was reference about one month's pay in the notice and that he did not accept that. In re-examination he says that the company did not offer one month's notice pay Apart from the fact whether one month's pay was offered or not, it is crystal clear from his statement that he was not offered retrenchment compensation as required under Section 25F (b) What was offered by the company was the wages for the work already done i.e., the work for 26 days Hence it is crystal clear that provisions of Section 25F(b) were not complied with in respect of these 10 workmen.

58. Shri Jetha Shanker Misra, Ex. 24/W states that all the remaining employees working in the company including him were removed from service in May, 1969 Taking this fact into consideration and having regard to the reference made to this Tribunal, regarding retrenchment of these employees, all these 10 employees involved in Ref. No CGIT-2/10 of 1970 were terenched illegally and without following the provisions of Section 25F of the I.D. Act.

59. As the retrenchment of 40 employees referred to above is not legal and just, the question arises to what relief these 40 employees are entitled

60. Shri Sowani for the employees contends that the retrenchment of the 40 employees should be set aside, that these 40 employees should be reinstated in service that they should be given full wages till the date of the Award and that they should be deemed to have been retrenched on the date of the Award giving all benefits of retrenchment compensation, and notice pay as required under Section 25F of the I.D. Act.

61. Shri Damley for the company contends that the company closed down its activities with effect from 26th May, 1969 As there was no work, the department was closed down. He further contends that the workers would be entitled to full compensation on the basis that they continued in service till 2nd June, 1969, as the retrenchment is bad in law and because the concern closed its business since before 2nd June, 1969. This contention cannot be accepted.

62. By notices Exhibits 10/W and 13/W referred to above, the employees were not informed that they would be retrenched because the concern was closed down and they would be entitled to closure compensation under Section 25FFF. As it was not the case of the company that the employees should be given compensation on the basis that the concern was closed down, it would not be allowed to take this stand for the first time at the time of arguments. The company has not taken this stand even in its written statement. I am therefore unable to accept the contention of Shri Damley raised in this respect.

63. It appears from the evidence of Shri Diwan, Ex. 8/E that he would not restart his work even if he recovers his bills from the company concerned. It does not appear that the company has engaged any employees after the retrenchment of the employees. It may be, therefore, taken that the company has now stopped doing business. Of course, when it restarts doing business, it will have to employ these retrenched employees.

64. As the retrenchment of the 40 employees referred to above is illegal, the same has to be set aside In ordinary course, all these 40 employees would be entitled for reinstatement in service with continuity of service and back wages. In this case the relief of reinstatement would not serve any purpose because the company is not doing ship repairing business now. Taking this fact into consideration and having regard to the motive of the company in retrenching these 40 employees and other facts and circumstance on record, I am of the view that these employees should be given compensation in lieu of reinstatement.

65. In my opinion this compensation should be equivalent to 8 months wages in lieu of reinstatement. Hence my findings on point Nos. 5 and 6 are as above.

Point Nos. vii and viii.

66. The Union's case in respect of termination of service of Shri Rajaram Suraibali, Permanent carpenter, is given in its written statement Ex. 2/W at paras. 17 to 20.

67. According to the Union;

(i) Shri Rajaram Suraibali was a permanent Carpenter of the company. He was orally informed by S/Shri Jagdish and Baldev, the partners of the company that he should not report for work from 20th March, 1969, onwards

(ii) The company did not issue any letter discharging him from service. The company took away the personal diary of Shri Rajaram Suraibali and destroyed the same Shri Baldev also manhandled and ill-treated him.

It was Shri Rajaram Suraibali who took leading part in organising the workers of this company into the Union. The management did not like the part played by Shri Rajaram Suraibali and on many occasions threatened him with termination of service. Various complaints have been recorded with various Police Stations such as Yellow Gate Police Station, Sewree Police Station, Byculla Police Station and Kala Chowki Police Station The employers went to the extent of engaging hirelings to assault the members of the Union including Shri Surajbali.

(iii) The company did not give him any notice or wages in lieu of notice. No enquiry was conducted against him. The termination of service is illegal.

(iv) When the workman was stopped on 20th March, 1969, the Union wrote a letter bringing to the notice of the company that the services have been terminated wrongfully and such termination amounted to victimisation. The company did not reply. The demand was therefore, framed and was submitted to the management of the company. Conciliation Officer held negotiations, but could not bring the parties to a settlement. Hence the dispute in this respect was referred to this Tribunal for adjudication. As the termination of service of Shri Rajaram Surajbali is illegal and improper he is entitled to the relief of reinstatement with full back wages and continuity of service.

68. The company's defence in respect of the termination of service of Shri Rajaram Surajbali is given in its written statement Ex. 3/E.

69. According to the company;

(i) Shri Rajaram Surajbali was not a permanent workman. He was employed as a temporary hand. He had hardly worked for about a month. Since there was no work for him his services were terminated. Letter to this effect was given to him. The company will produce the same at the time of hearing.

(ii) The termination of his services was in writing. He refused to accept it. It is not true that his personal diary was destroyed by the company. It is also not true that he was manhandled by the partners of the company. The company even today does not know who were the leading workers and who organised the Union.

70. At the outset it may be noted that Shri Rajaram Surajbali has not been examined as a witness in this case, as he was not available. The Union relies on the evidence of its Assistant Secretary Shri Pandit, Ex. 23/W and Shri Jetha Shanker Misra, Ex. 24/W to show that the termination of service of Shri Surajbali, permanent Carpenter by the company is not justified. The Union also relies on certain circumstances i.e. non-production of diary, Pay rolls, attendance register, letter regarding termination of service referred in the written statement Ex. 3/E, by the company.

71. According to Shri Pandit, Assistant Secretary, Transport and Dock Workers' Union, Bombay;

(i) Immediately on the joining of the employees of the Chaswan & Co. as members of the Union the management started victimising the employees by dismissal, retrenchment etc.

(ii) In respect of Shri Rajaram Surajbali he made complaint against Chaswan & Co. on 21st March, 1969. Thereafter he made complaint to the Assistant Labour Commissioner (Central) regarding Chaswan & Company illegally stopping Rajaram Carpenter from work from 1st April, 1969.

72. Copy of letter dated 21st March, 1969 sent by registered A. D. post to M/s. Chaswan & Co., is as follows:—

"SUBJECT.—Rajaram Surajbali, permanent Carpenter—illegal stoppage of work.

It is reported to us by Shri Rajaram Surajbali, your permanent Carpenter, that he was orally informed by Sarvashri Jagdish Chandra and Baldeo, the Proprietors of your company not to report for work from 20th March 1969. It is said that he was not issued with any letter by your company. He was further informed that since he joined the Union he would not be allowed to continue in the service of the company. Besides this the attendance, which had been marked in each month in the personal diary of the workman, was torn by Shri Baldeo with a view to destroy the material evidence for having worked with your company till that date.

It is said that he was also manhandled and ill-treated by Shri Baldeo which is most objectionable. The stoppage of Shri Rajaram Surajbali from his service is a glaring example of clear-cut victimisation with malafide intention for having joined the Union. This *on slaught over the right* of a workman to join a Union by your management is illegal. Thus, your entire action is highly objectionable, improper, unwarranted and uncalled for, besides being illegal.

We, therefore, request you to kindly reinstate Shri Rajaram Surajbali in his service with full back wages and all other benefits from the date he was stopped from work i.e. 20th March, 1969, failing which the Union will be compelled to take such necessary action against your company which it may deem fit and the responsibility will entirely lie on your shoulders in the circumstances which please note."

73. On 1st April, 1969, the dispute regarding Shri Rajaram Surajbali was raised before the Assistant Labour Commissioner(C), Bombay (*vide* copy of letter Ex. 15/W). It is as follows:—

"SUBJECT.—Shri Rajaram Surajbali, Permanent Carpenter—illegal stoppage of work by M/s. J. Chaswan & Co., Quay St., Darukhana, Bombay-10.

Enclosed, please find a copy of our letter No. TD/87/629/69, dated 21st March, 1969, addressed to M/s. J. Chaswan & Co. The contents of our above quoted letter are self-explanatory. We regret to note that we have not received any reply from the Management of M/s. J. Chaswan & Co., as yet nor Shri Rajaram Surajbali has been taken back in service by the company until this date. Shri Rajaram is, thus facing financial difficulties for no fault whatsoever on his part.

It may please be noticed that Shri Rajaram Surajbali has not been given any Memo in regard to stoppage of work nor any reason has been mentioned by the management. He was orally informed on 19th March, 1969, by the management not to report for work from 20th March, 1969. The action of the management while stopping him from work without any notice or reason amounts to illegal action as it is clear victimisation with malafide intention to Rajaram Sorajbali.

Shri Rajaram Surajbali has been stopped from work since he joined the Union against the will of the management. Shri Rajaram has been reporting for work every day as usual at the place of his work although he is not offered any employment by the management.

We have been, thus, compelled to refer the matter to you for your kind interven ion.

OUR SPECIFIC DEMANDS ARE AS FOLLOWS:—

'Shri Rajaram Surajbali should be reinstated in his service with full back wages and all other benefits with effect from 20th March, 1969, by M/s. J. Chaswan & Co., Bombay'.

We now request you to kindly admit the dispute in conciliation and use your good offices to bring about an amicable settlement of the same.

Thanking you."

74. There can be no doubt from the evidence of Shri Pandit and the two letters referred to above that Shri Rajaram Surajbali had made grievances to the Union that he was orally informed by S/Shri Jagdish Chandra and Baldeo not to report for work from 20th March, 1969 onwards and that he was not given any written order in this respect. He also made grievances about the ill-treatment given to him. On account of these grievances made to the Union, the Union raised the demand regarding termination of services on the company and thereafter to the Assistant Labour Commissioner(C), Bombay.

75. Shri Jetha Shanker Misra, Ex. 24/W, a colleague of Shri Surajbali states in his evidence before me that the company dismissed Shri Rajaram Surajbali Carpenter first, who was beaten by both brothers namely Jagdish Chandra Diwan and Baldeo Diwan.

76. There can be no doubt from the evidence of Mishra referred to above and the admission given by the company in respect of Shri Surajbali that services were terminated by the Company with effect from 20th March, 1969.

77. The company contends in its written statement Ex. 3/E. that Surajbali was employed as a temporary hand, that he had hardly worked for a month, that as there was no work his services were terminated and that a letter to that effect was issued to him. The company further undertakes in its written statement to produce this letter at the time of hearing. The same letter is not forthcoming before me. The company has not given any explanation for not producing the same before me. Hence the only inference that would be drawn is that the company must not have given any written letter to Shri Surajbali for terminating his service and that he must have been orally stopped from work as contended by the Union.

78. The company has not produced any diary or the pay roll or the attendance register in respect of Shri Rajaram Surajbali. The company has not produced even the order of appointment in respect of Shri Surajbali. As these documents are expected to be in the possession of the company, it is for the company to produce the same on record.

79. In the reference relating to Shri Rajaram Surajbali he is described as permanent carpenter. In view of this it was absolutely necessary for the company to produce the necessary records to show that Surajbali was not a permanent carpenter working with it and that he was a temporary workman. Non-production of these documents by the company leads me to infer that the company is intentionally withholding the documents and that these documents if produced would go against the company's case that Shri Surajbali was a temporary workman. In these circumstances I hold that Shri Rajaram Surajbali was a permanent Carpenter working in the company.

80. As Shri Rajaram Surajbali's services were terminated without holding any enquiry or giving any legal notice, his termination of service by the company cannot be said to be justified.

81. As the termination of services of Shri Rajaram Surajbali by the company was not justified, he is entitled to be reinstated. But in this case relief by way of reinstatement would not serve any purpose as the company is not doing its business. I am therefore of the view that Shri Rajaram Surajbali should be given compensation in lieu of reinstatement.

82. As regards the amount of compensation I am giving the same compensation as given to 40 retrenched employees i.e. he will be entitled to compensation equivalent to 8 months wages in lieu of reinstatement. Hence my finding on point Nos. vii and viii are as above.

Point Nos. (ix) and (x)

83. The company's contention in respect of these points as given in Ex. 3/E is that this demand does not survive because the company has stopped its activities and because there are no workers with the company. There is much force in this contention.

84. The company was doing business of ship repairing. For that work it had employed number of employees. The company has retrenched all the employees and stopped its ship repairing industry. Hence it will be in the interest of justice not to give any finding in respect of these demands in this reference and to allow the Union to raise fresh industrial dispute in respect of revision of wages, overtime, working hours, Provident Fund, Stream Allowance, Holidays, Bonus Leave, Photo-Identity Cards, Attendance cards and Wage Board benefits, if the company re-starts its work and employs workmen. I therefore give no findings on issue Nos. ix and x but reserve the right of the Union to raise a fresh industrial dispute as and when necessary to do so.

Point No. (xi)

85. In view of the above findings, I pass the following order in respect of both references.

Order in Respect of Ref. No. CGIT-2/2 of 1970

(i) It is hereby declared that the Transport and Dock Workers' Union, Bombay may raise a fresh industrial dispute against the management of Messrs J. Chaswan & Co., Bombay-10 in respect of revision of wages, Stream Allowance, Holiday, Leave, Issue of Photo-Identity Cards and Attendance Cards, extension of the benefits of the recommendations of the Wage Board for Port and Dock Workers if the management of Messrs J. Chaswan & Co., re-starts its ship repairing business and employs workmen i.e. as and when necessary.

(ii) It is hereby declared that the termination of services of Shri Rajaram Surajbali, permanent Carpenter, by the Management of Messrs J. Chaswan & Co., Bombay-10 is not justified and that he is entitled to compensation equivalent to 8 (eight) months wages in lieu of reinstatement.

(iii) It is hereby declared that the retrenchment of 30 workmen by the management of Messrs J. Chaswan & Co., Bombay-10 referred to in demand No. 3 in this reference is not justified and that each one of them is entitled to compensation equivalent to 8 (eight) months wages in lieu of reinstatement.

Order in respect of ref. No. CGIT-2/10 of 1970

(i) It is hereby declared that the retrenchment of 10 workmen by the management of Messrs. J. Chaswan and Co., Bombay-10 referred to in the Schedule of this reference, is not justified and that each one of them is entitled to compensation equivalent to 8 (eight) months wages in lieu of reinstatement.

Common Order in respect of both the references

(i) Awards are made accordingly.

(ii) No order as to costs.

(Sd.) N. K. VANI,

Presiding Officer,

Central Govt. Industrial Tribunal No. 2, Bombay.

EX. 3/E

ANNEXURE X

BEFORE SHRI N. K. VANI, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, AT BOMBAY

REFERENCE (CGIT) No. 2/2 OF 1970 & 2/10 OF 1970

BETWEEN

M/s. J. Chaswan and Company, Bombay

AND

Workmen employed under them.

In the matter of wage scales, Stream allowance etc. and reinstatement of workmen.

May it please your Honour,

The Secretary, Transport and Dock workers union has forwarded a Statement of claim in the above two references and forwarded a copy of the same to us which our representative received in the office of the Honourable Tribunal on Monday 16th November, 1970.

In fact 16th November, 1970 was the date fixed to enable M/s. J. Chaswan and Company, hereinafter called the Company and since the statement of claim of the Transport and Dock workers Union hereinafter referred to as "Union" which represents the workmen of the Company, was received on 16th November, 1970. The Company could not file its reply as directed by the Honourable Tribunal. The Company prays that the delay in filling its reply be excused and condoned.

The Company states that it is a partnership company and accepts the Statement of that extent as stated by the union in para 1 of its statement. It is further admitted that the office of the company is on the Bombay Port Trust land rented out to the company by the Trustees of the Bombay Port Trust. It may be pointed out here that the Bombay Port Trust hold a number of plots of land around the Bombay Harbour which are rented out or leased out to a number of persons and factories and offices. This means that the Bombay Port Trust is the landlord and those occupying them are either leasees or tenants and nothing more than that. The normal laws of the land that govern the relation between a leasor and leasee or a landlord and a tenant are applicable and Industrial Disputes Act, 1947 does not come in play in these matters. This relation does not bring the occupiers of these lands or plots under the Bombay Port Trust enactments or rules which are framed for the Industrial relations between certain employers and their workmen. These occupants like the company under reference do not get covered under the Dock workers Regulations simply because they are tenants or leasees of the Bombay Port Trust. Hence the mention in para 1 of the statement of the union which is suggesstive to that effect needs to be ignored.

As regards the description of the activities of the company. The Union has made the statements on wrong foundations. The facts of the activities are that Shri J. R. Diwan one of the partners of the company has worked on the ships as an engineer for a considerable number of years and after retiring has started this concern as consultant. Being acquinted in the shipping companies and agencies, the advantage of his knowledge is taken by some of the leading shipping companies. They also many a times asked him to supervise the work which was carried out according to his advise. Sometimes he was asked to get the work done. This is how sometimes he undertook the minor repairs to ships, mostly in wet dock and in stream. His financial capacity and other paltry resources at his disposal did not allow him to undertake big jobs. Moreover most of the big jobs are handled by M/s. Alcock Ashdown, M/s. Mazgaon Docks or M/s. Scindias etc. Petty jobs in stream and wet docks were handled by Shri J. R. Diwan through the agency of his office M/s. J. Chaswan and Company. This Company did not have or rather never had a big complement of workmen under it. The company did not need it since it never worked as ship builders. Whenever an occassion arose some workmen were collected and the jobs were completed. The employment period of such workmen was according to the duration of the job. The Company did not engage any workmen on permanent basis.

The allegation of the Union that this company worked in Dry docks is a statement far from truth. When a ship needs major repairs it is taken into the Dry Docks as stated above. This Company never had capacity to undertake major work and hence taking jobs in Dry Docks does not arise. The Union also knows it too well and hence it has asked for the stream allowance in the charter of demands.

As for the workmen reporting to the office of the company it is but natural since they were engaged on jobs occasionally undertaken by the company. It is already admitted that the office of the company is situated on the Bombay Port Trust land along with hundreds of them. As regards repairs to certain parts of the ship, the company makes it abundantly clear that this, company has no workshop of its own and this company is purely a commercial office if and when any spares are needed for any jobs it gets it made from such workshops in Bombay and nearabout. The statement that the factory does not manufacture any new material but is engaged in repairing parts of vessels is a hearsay story with no foundation. The company again makes this statement categorically that it had no workshop at any time of its own. The union further admits that the workmen under reference were never required to work in the workshop (which never existed). This is a clear admission by the union of the absence of workshop.

Turning to the point that the workmen under reference did repair work in ships is admitted by the company. The only thing the union has forgotten to mention is the place of work. As stated above the company accepted small jobs which were done while the ships were in stream and in wet docks. The ships were no doubt in the sea near the major port of Bombay, but that much is not sufficient to attract the provisions of the Docks workers regulation. Not only that but the question arises whether Industrial Disputes Act, 1947 is applicable to the workmen.

The Union has come out with a funny logical contention. Since the ships are under repairs, no loading or unloading is possible and hence the repairing jobs are very much concerned in connection with the preparation of ships. The Union proceeds further that in case these workmen go on strike, the ships will have to occupy berths and they cannot leave the ports and hence the works come under the perview of the Dock Workers (Regulations of Employment) Act, 1948.

As regards the Dock Entry permits, they have to be obtained by everyone who has to enter the docks. The dock entry permits are issued to the staff of any company or employer who has to send his staff into the docks. Issue of dock entry permit does not necessary mean that the person for whom it is issued is a dock worker. A dock worker who is covered under the above mentioned Dock Workers (Regulation of Employment) Act, 1948 is defined in the act and those persons only are subjected to that enactments. Therefore it will be seen that this argument that these workers were issued photo identity cards and therefore the work of the company was concerning the major port also does not make any sense.

The company is not aware till today as to when its workers joined this Union. The company also is no way concerned about it, since one of the partners of the

company himself was a leading member of the trade union while in service and as such the company had never any objection to the workmen joining any trade union. The company is alive to the fact that forming union is a right of the workmen and hence it was never worried about their joining union. It is admitted that the union submitted a charter of demands enlisting many demands. The demand for overtime payment was made and also applications were preferred by the workmen in the payment of wages Court III, and the applications were disposed off as whenever any overtime work was done the workmen were paid properly and hence they could not claim anything in addition to the legal payments made.

In para 3 of the statement of the union certain statements are made regarding termination of the services of Shri Rajnaran Surojbali which is a colourable exercise to prove that he was terminated because he joined the union. The company states that this Shri Rajaram Surajbali was employed as a temporary workman and as such his services were terminated in the normal course when the work was over. As regards retrenchment of some other workmen in April 1969 the Company wishes to point out that the job that was undertaken was over in the month of April 1969 and most of the temporary workmen were terminated. There was no work on hand and the company could not afford the luxury of paying temporary workmen when there was no work. This termination had no relation whatsoever with the formation of the union. The Company is in a position to prove from records that it was not able to secure another job in April 1969. Not only that but after having waited for one more month, when the company could not secure any work, most of the workmen referred to in these references were retrenched. The retrenchment was effected according to the provision of the Industrial Disputes Act, 1947 and the procedure laid down was followed. The retrenched workmen were offered all the dues as per provisions of Section 25F of the said Act, but the workmen refused to accept the same. The Company was helpless in securing any more jobs. Not only that but even till today the company is unable to secure any jobs and now due to the default of payment by some clients of the company. The company is facing financial difficulties and it had to resort to legal remedies to recover the dues which run in a few lacs. The company will produce the relevant document strictly in confidential manner to satisfy your Honour the worst plight of the company at present. Since the party which is a defaulter is a renowned party and well known in the shipping circle, the company cannot declare the name in this statement, but is ever willing to place all the papers before your Honour at the time of hearing. The company never harrassed the workmen for joining the union and this hue and cry by the union is only a smoke screen.

The company takes exception to the statement in para 4 of the statement of the union certain false allegations are made therein to create prejudice against the employer and the company prays that the union be directed by your Honour either to substantiate the allegations or withdrew them immediately.

As regards other contents regarding conciliation proceedings and reference, they are covered in substance.

As for dividing the demands in three parts, the company states that all the demands deserve to be dismissed or rejected.

As for the demands pertaining to the wage scales etc. they do not survive now as there are no workers for whom the demands are made even the disputes were admitted in conciliation and subsequently referred to your Honour, much after the retrenchment of all the workmen and since that time the company has stopped its business in that line there does not seem to be any chance at present of resuming its activities in the near future due to the fact the company is passing through a very bad financial position due to the failure of same its clients failing to pay up the bills and the company forced to proceed against them. Hence until the recoveries are made the company will not be in a position to resume its activities. The present state of affairs of the company it may be said that it is a practical closure. Hence the demand regarding wage scales etc. will have to be dismissed.

As regards the retrenchment of workmen in April 1969 and thereafter, the company submits that it has followed the provisions of section 25F(a), (b) and (c) and hence it also cannot be challenged. It is the right of the employer to run his business as he likes and the workmen cannot question him as long as he is following the legal provisions. The company submits that it has not undertaken any job of minor repairs to ships after 11th April 1969 till today and has not employed any workmen after retrenching the workmen under reference. Hence those demand also be dismissed and rejected.

In para 6 the union demands wage increase with effect from 1st April 1968. The union has already admitted that the workmen joined the union in February 1969 and the union submitted a charter of demands on 21st March, 1969. Then on what grounds the retrospective effect is demanded from 1st April 1968 is not at all understood by the company. It is a fact that the wages were never fixed under an award or settlement. There was no occasion to do so moreover as stated initially the minor repairs to the ships is not a permanent activity of the company, workers were enlisted whenever need arose and they were paid wages according to the oral agreements between individual workmen and the company. The wages varied on different jobs and they were fixed after mutual consultations. Till the union raised the demands, the workmen individually approached the management, and agreed to work on agreed rates. There was never any collective bargaining moreover workmen had to be engaged according to the jobs available. Only such workmen were employed as were useful for the given jobs. The company fails to understand the term bare minimum wage. According to the knowledge of the company there is no minimum rate fixed for this industry. Moreover what was paid to the workmen was very much higher that the statutory minimum in other industries in Bombay where such rates have been fixed by the Government of Maharashtra on the recommendations of the minimum wages committees in these industries. The later part of the demand has no base since there are no workmen working in the company and hence fixing of any wage in the absence of workmen will be a futile exercise.

As regards the arguments in para 7 as stated above, it is only an academic discussion. Since there are no workers, there are no wages that could be compared with wages of workmen in the ship repairing industry. At present the company is existing in name only and a skeleton staff is maintained such as clerk, typist and accountant and one or two hands to assist the partners. The demands do not pertain to them at all. The company reserves its right to meet the claims of the union in the matter of wages in comparable concerns, when made by the union at the time of hearing.

In para 8, the union tries to substantiate its demand for streem allowance. It is a fact that our workmen mostly worked on ships in stream and the company used to provide them transport and its own cost and the time required for going to work and return from work, till they reached the dock area was counted as working time and were paid for that period including overtime payment if need be. In the opinion of the company, it did behave in a fair manner and gave them better monetory benefit that what is demanded by the union as stream allowance. Moreover the most important fact is that there is no work in the stream,

there are no workmen on the roll of the company and hence awarding any stream allowance would be in theory only. The best way would be that the union withdraw the demands under reference and come to the Honourable Tribunal, if and when the company resumes its activities. As stated above the chances of resuming its activities in that line are remote. The Company reserves its right to make further submissions after the union files further documents in the shape of conditions available elsewhere as regards harzards in the jobs today are everywhere and in every job hence no special mention is necessary.

In para 9 of the statement of the union, the union has demanded 13 paid holidays. The present need of the nation is less holidays and more work and production. Even the Honourable Supreme Court also holds the same view. Therefore, it will be seen that the demand is frivolous and deserves to be rejected straight away. Further the company refutes the claim of the union that its workers are dock workers. The company be allowed to file further documents if the union submits any at the time of the hearing.

In para 10 of the statement of the union, we are faced with some demands which are made in a light hearted manner or else they are frivolous deserving total rejection at once. The demand in 10 (a) is for privilege leave, one day for every 11 days with an accumulation upto 120 days. With so many years experience in the field, and glance at various awards of the Tribunals, nowhere such fantastic demand is made by any union or ever it is granted. As stated above, the need of the day is not more rest but it is more work and production. The late Shri Jawaharlal Nehru always said "Aram Haram Hai" and if we forget these words, we will not only be disloyal to the great leader but will be marching the entire nation to ruins. Moreover financially also it will be impossible to concede such a demand. Hence it is prayed that their demand also be rejected.

In para 10 (b) the demand pertains to sick leave of 15 days with a right of its accumulation upto 90 days. This demand also is fantastic. Sick leave could only be for sickness and as such there cannot be a demand in general of a fixed period. The demand deserves to be rejected. Even the union has found it difficult nay impossible to substantiate the demand.

In para 10 (c) the demand is for casual leave 15 days casual leave is demanded. It is unfortunate that in an underdeveloped country like ours, which wishes to advance at a faster rate, the union leaders are more keen to claim more holidays and leave, thus depriving our nation of the production. Casual leave is to our knowledge unheard of in the advanced countries in the west. This is nothing but luxury. Not only that it has a bad effect on the morals of the working class The union leaders are teaching the simple folks to lose their self respect and teach them to demand money for not working. It is as if to feed themselves on charity. A self respecting citizen of this great independent nation may lose any important limbs of his body but not his self respect. Even the handicapped persons also do not wish to get anything free, they want to earn by working. They are demanding work and return for the same. The whole basis is that they should never live on charity while in the industrial field, we find that the trade union leaders are competing among themselves to ask for wages for no work. The company humbly submits that this Honourable Tribunal will reject these demands stralght away.

If we take a cumulative effect of the demand for leave and holidays the picture on the face of its looks like an essay on stupidity. 13 days of paid holidays, 30 days of privilege leave, 15 days sick leave, 15 days casual leave in addition to 52/53 weekly offs,—the total comes to 125/126 days of no work out of 365 days. That means the nation will have production of 240 days of 8 hours maximum a day. What is expected today is at least 8 hours work for 310 days a year while the union wants the workmen to work for only 240 days. Payment to workmen for more than 1/3 years absence will shatter the industries completely. Can the same scheme be applied to agriculture which is the real and main vocation of people in this country where at least 90 per cent of the population is engaged in it? Can we afford this luxury of no work and payment for its will the nature excuse us, if we follow this trend in that sphere. If the nature cannot tolerate it, why a man should tolerate it? This question deserves a very critical study and as this Honourable Tribunal is well versed, the company is confident that this Honourable Tribunal will reject these demands without any hesitation.

In para 12 the union has demanded photo identity passes and attendance cards. The demand has become redundant due to the fact there are no workmen working in the company. Moreover the photo identity passes is a part of disciplinary and security rules of the Port authorities and since these authorities are not a party to this reference, our fear is that this Honourable Tribunal will have no jurisdiction to make an award on the question of photo identity cards which is solely at the discretion of the Port Authorities and no directions could be given to compel them to sanction these. As regards attendance cards, the demand was made by the union and the company had already conceded the same and attendance cards were issued to the workmen while they were working since there are no workmen in the company, it would not be issued at present since the demand is conceded the demand is redundant. Since attendance cards were given, the company was not bound to sign the individual diaries of workmen. Moreover these diaries were not the property of the company and no direction should be given to the employer to sign the private diaries of the workmen.

In para 13 of the statement of the union, a funny demand is made. It has asked this Honourable Tribunal to give direction to the employer to extend the final recommendations of the wage board to its workmen if the company is correct in understanding this issue, the wage board to be appointed by the government with certain terms of reference the report of the wage board in to be implemented by the government itself even with any modfications. Hence in this respect the government alone can compel the employer, to implement the wage board decisions and therefore it takes this Honourable Tribunal out of jurisdiction if the Tribunal interferes with the powers of the government. The powers of the industrial Tribunals are defined and nowhere it is that the industrial Tribunal is asked to direct the implementation of the wage board decisions in case the employer fails to implement them, the government has powers to compel an employer or take suitable action against the defaulter. The company is sure that this Honourable Tribunal will accept this contention of the company and reject this demand also.

Para 17 of the statement of the union is in regard to the termination of Shri Rajaram Surojbali a carpenter. The company denies the allegation that he was a permanent workman. The company submits that he was employed as a temporary hand and worked hardly for about a month. Since there was no work for him he was terminated. A letter to that effect was given to him. The company will produce the same at the time of hearing.

In para 18 further allegations are made without foundation. As stated in the above para, the termination was in writing. The workman refused to accept it is denied that his personal diary was destroyed. The company was in the way responsible for the personal diary of the workmen nor could it form a part of the records of the company. Hence the question of destroying the same never arose. The company denies this allegation vehemently. It is a liablous statement.

and the company submits that this Honourable Tribunal should take steps against the union in whatever way the Honourable Tribunal may deem it fit.

The management refutes all the allegations such as manhandling of the workmen by the partner of the company The management even today does not know who were the leading workers and who organised the union. As stated in the opening paragraphs of the statement the maangement never questioned the right of the workmen to form a union. The other portion regarding complaints in various police stations has no relevance to the reference, since the forum to discuss the same and aportioning the blame on any party goes to the jurisdiction of the Magistrates courts and not the Industrial Tribunals. Suitable action was taken by the Honourable Magistrate in these cases and the culprits were punished. That episode had nothing to do with the trade union activities and were matters of law and order and were taken up before the proper authorities.

In para 19 it is stated that failing any settlement in this dispute, the conciliation officer sent a failure report and Government of India referred the same to this Honourable Tribunal. The company has already stated the facts of the case and has denied the allegations

In paras 21 and 22, the union has stated that there was retrenchment of some of the workmen on 14th April, 1969 Some workmen were retrenched by giving them notices. The company offered them their legal dues, but perhaps under the advice of the union, the workmen refused to accept them. Such workmen who were temporary were not entitled to notice pay and as such it was not offered. The company submits that it has followed the provisions of section 25 F of the Industrial Disputes Act 1947 in toto and there is no reason why the retrenchment should not be upheld. The management will produce all the relevent papers at the time of hearing.

In para 23 the union questions the reasons for retrenchment. As stated in the paragraphs above, the company was not able to secure work immediately or the rates that would suit the company There may be ship repairing work all along, but the question is whether an employer can afford it in the rates offered to him. There is keen competition among contractors and we who are known to be company which gives quality work could not secure work on our terms. Moreover, later on is stated above, the company came into financial difficulties due to non-recovery of its bills, and as such it would not think of new business. Moreover ship repairs is not the main line. The consultation work is the main thing.

In para 24 the union makes another allegation without any foundation The company has replied to those allegations in the earlier paragraphs and hence would not repeat it often and often. The company make it clear that it is not a case of victimization. The plea of victimization can only be taken if there is dismissal or discharge or any other punishment. Retrenchment is no punishment It is reduction of the strenght of workmen and the company submits that it is the company alone can decide as to how much strenght of workmen is to be maintained or reduced and the union cannot question it If we are permitted to submit we may say that even an Industrial Tribunal will not be able to question that right of the management as long as the management acts in the frame work of the labour enactments. Any retrenchment, if it is to be declared malafide, it has to be as per provisions of the enactment If an employer follows the law properly, the Industrial Tribunal even cannot blame the employer and order reinstatement. In this case the payments were offered to the emulovees. When they refused to accept a notice it was put up on the doors of the entrance for the office for the information of the employees This will clearly show that the management did make attempts to pay the dues but the workmen refused. The management also had issued individual notices to workmen and had intimated to such workmen who were on leave, its intention to retrench them after they resume. They were further informed that if they agree, they should inform the company, so that they could save the troubles of coming to Bombay from their native places and also waste of money on travel could be avoided But that even was not responded to by the workmen.

The company denies the allegation that the workmen were asked to leave the union and in case they do not the company will not take fresh contracts This is just the [redacted] wave and after thought. In the conciliation office also the company told the same thing, that it was unable to get new work and hence retrenchment.

In para 25 of the statement the union has preferred not to name the workmen who were not given notices. Each and every workman was given notice individually and payments offered to them.

As regards the 10 workmen concerned in reference 2/10 of 1970, only 5 belonged to M/s. J. Chaswan & Co. while the remaining five were never there in this company. This fact was clarified before the conciliation officer of the 10 workmen in the reference only

1. Vishwanath Dubey (Beni Madhav).
2. Ram Beni Madhav.
3. Ram nain **Brijmohan.**
4. Jatta Shankar Mishra.
5. Ramakant Parasnath.

belonged to M/s. J. Chaswan & Co and the reference pertaining to them is in order.

As regards

1. Balbusan Surojbali (2) Shashikant Ramchandra (3) John Braganza (4) Ram Murat Pandey (5) Jageshwar Bhagat.

Were not the employees of M/s. J. Chaswan & Co. and as such the reference in respect of those workmen is not properly made and thus null and void This Honourable Tribunal may find that it has no jurisdiction to entertain their cases as they were not the employees of this employer but were working in another concern and that employer is not covered under this reference. No separate reference is made. Therefore, as for these 5 employees who were not the employees of this company the reference is wrongly made and hence it cannot be entertained.

The company sums up this statement by submitting that since there are no workmen for whom the reference is made, which position was there before admitting the dispute in conciliation and naturally before referring this dispute to this Honourable Tribunal, the reference is hard in law and hence the honourable Tribunal has no jurisdiction to hear it. Even assuming the reference is good and it is heard it cannot be implemented as there is no work for these catecories of workmen and as such any directions in the matter of wage scales etc. will have only academic importance As regards the retrospective effect, even though this Honourable Tribunal has jurisdiction to grant the same from any date, still the company submits that in view of the worst financial position no retrospective effect be given

As regards retrenchment, since the company has acted within the frame work of the Industrial Disputes Act 1947 and since the union has failed to prove that the retrenchment is malafide, that demand be rejected.

As regard 5 workmen named in reference (CGIT) 2/10 of 1970 who are not the employees of this company, the demand for reinstatement cannot be granted in the absence of their employers who are not covered under this reference. As regards the remaining 5 employees who were employed by the company as stated above, as long as the union has failed to prove it to be malafide, it deserves to be rejected

The company craves leave to amend, alter, rescind any portion of the above statement if need be. Further it prays that it may be allowed to adduce further evidence at the time of hearing Bombay this 1st day of December 1970.

For J. Chaswan & Co.

Sd./-

Partner.

I Jagdish Ram Diwan, Partner, J. Chaswan & Co hereby declare that whatever is stated above is true to my knowledge and belief. Bombay this 1st day of December 1970

(Sd.) J. R. DIWAN,

EX. 2/W

ANNEXURE Y

BEFORE SHRI N. K. VANI, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, NO. 2, AT BOMBAY

REFERENCE (CGIT) No. 2/2 OF 1970

AND

REFERENCE (CGIT) No. 2/10 OF 1970

Employer's in relation to M/s. Chaswan & Co., Bombay.

AND

Their Workmen.

In the matter of Demands in respect of revision of Wages, Stream Allowance, etc., and Retrenchment of workmen.

May it please the Hon'ble Tribunal,

Transport and Dock Workers' Union (hereinafter referred to as Union) representing the workmen employed by M/s. Chaswan & Co. (hereinafter referred to as Company) begs to submit its statement of claims in the above references as follows:

(1) The Company was a proprietary concern of a long standing with Shri J. R. Diwan as its sole proprietor. In the year 1960, it was however, converted into a partnership concern with Messrs. J. R. Diwan, B. R. Diwan and Smt. Kamaladevi Diwan as partners. The establishment of the Company is situated within the port area and in fact the land on which the factory is situated belongs to Bombay Port Trust. The said Company is primarily engaged in the ship repairing jobs in the docks, and consequently their workmen are working in the dry docks situated within the port limits. The workmen are also required to work in the mid-stream if any minor repairs to the ships are required to be done in the mid-stream. They also are engaged on ships berthed at the wet docks for repairs. On occasions the workers are required to go from the docks to the factory of the employer which is also situated on the Port Trust land, for the purposes of repairs to plates, and other parts of the ships which are required to be done at the workshop. The factory, it should be noted, is not manufacturing any new article or part required for repairing the ship, but it is engaged only in repairing the parts of the vessels which require repairs. All the parts whether repaired at the workshop or inside the docks are the parts of the ships taken from the ships to the factory or in the dock, only for the purposes of repairs. The workmen concerned in this dispute are engaged only for such repair jobs, and are not required to work in the workshop for the purposes of manufacturing any new article or part. Thus, the intrinsic and the main work of the Company is the work of ship repairs which must be carried on in the port and in the case of the Company in Bombay it is carried on in major port. The workmen who are working on the repair jobs in connection with the ship have to necessarily observe the rules of the Port and Dock authorities. When the repairing work of the vessel is in progress, the loading and unloading work of cargos cannot take place because the vessel is defective for receipt of cargos. Unless, therefore, the repairing of the ship is completed the vessel is unable to load cargo and it is also not able to move out of the Port. The workmen who work on the repairing jobs to the ships are thus very much concerned in connection with the preparation of ships and vessels for receipt or discharge of cargos or leaving port. In the event of the strike by the workmen of the Company while the repairing work is in progress in the Docks, the vessels will be unable to leave the port and will continue to occupy berths so long as repairing work is not completed. It will thus, affect the working of the port. These workers are, therefore, dock workers within the meaning of the definition of the said term as given in the Dock Workers' (Regulation of Employment) Act, 1948.

Moreover, the workmen have been issued Photo Identity cards by the Bombay Port Trust on the recommendation of the Company with a view to facilitate lawful entry of the dock workers into the docks. Thus, the work undertaken by the Company is in relation to the activities concerning the major port.

(2) In the month February, 1969, the Union enrolled the workmen of the Company as its members. After ascertaining the existing conditions of service of the workmen, the Union submitted a charter of demands to the Company on 19th March, 1969. In the charter of demands the Union asked the company to increase the existing total wages of the workmen by 75 per cent. It demanded overtime payments, fixation of working hours, Provident Fund, Stream Allowance, Leave, *etc.*

(3) After the Company received the above charter of demands from the Union it started harrassing the workmen. It unilaterily stopped from work Shri Rajaram Surajbali, who was a permanent carpenter of the Company. Later on in the month of April, 1969 it terminated the services of many of its employees on the ground that there was slackness in work. All this was done illegally by the management, only with a view to terrorize the workmen, so that, they would resign from the Union and in that event the Company would not have to give any increases to the workmen.

(4) The exploitation of the workmen was cruel as they did not succumb to the unfair labour practices of the employers. They remained undaunted and continued their fight with the employer for betterment of their conditions of services. The dispute was taken up in conciliation, but the same could not be settled at that level. The conciliation officer made his failure reports to Government, on consideration of which the Government referred the first dispute by its order dated 12th February, 1970, and second dispute by its order dated 17th April, 1970 for adjudication. The second dispute was initially referred to the Industrial Tribunal consisting of Shri A. T. Zambre, but later on the same has been transferred by Government to this Hon'ble Tribunal.

(5) The demands referred to the Hon'ble Tribunal in both the references can be divided into 3 parts. First part consists of the demands relating to conditions of service such as wages, stream Allowance and holidays etc. The second part of the dispute consists of the demand in respect of termination of services of Shri Rajaram Surajbali, permanent carpenter and the third part of the dispute consists of retrenchment of 30, 10 total 40 workmen.

PART—I

(6) *Wage Increase.*—The first demand is in respect of revision of wages. It has been demanded by the Union that the existing wages of the workmen should be immediately increased by 75 per cent with effect

from 1st April, 1968. It was also demanded that pending final settlement of the issue of increase in wages in interim relief of at least 50 per cent of the existing wages, should be granted to each workmen by the Company with effect from 1st January, 1969. The Union proposes to justify the first portion of the demand for final relief of 75 per cent increase in the existing wages paid to the workmen. The existing wage rates have not been fixed either under any Award or under any biparties settlement between the Union and the employer. The wages have been arbitrarily fixed by the Company. The existing wages are so low that they do not even reach the bare minimum wage level. It is, therefore, imparative that wages be increased immediately without any reference to the financial position of the Company.

(7) Wages at present paid to the workmen of this Company are also much lower than the wages paid to their employees by the employers of comparable concerns in ship repairing industry. The Union craves leave to submit charts giving information relating to existing wages paid to the workmen of the Company, wages paid to the workmen in comparable concerns in the industry, and the total effect of the demand made by the Union for increase in wages, at the time of hearing of this dispute. On examination of the above statements, the Tribunal will no doubt be convinced that the demand of the Union is very reasonable and hence should be granted by the Honourable Tribunal.

(8) *Stream Allowance.*—It is demanded by the Union that each workman should be paid stream allowance at the rate of Rs. 3/- per shift, when employed in stream. At present no stream allowance is paid to the workmen even though they are employed to do the work of the Company in stream. Workmen of similar concerns in this industry whenever employed for work in stream are given stream allowance. The Union craves leave to put in a statement showing that the stream allowance is being paid to the workmen of other comparable concerns in this industry at the time of hearing of this dispute in court. The Tribunal will then be pleased to appreciate that the demand of the Union for stream allowance is just and fair.

The Tribunal will be pleased to know that working in stream is very hazardous job and also risky. The enviornments under which the workmen have to work are not congenial. It is, therefore, necessary that the allowance as demanded by the Union should be granted.

(9) *Holidays.*—It is demanded that at least 13 paid dock holidays as are declared by the Bombay Port Trust each year should be granted. The Union submits that all dock workers working in the Bombay docks under various employers such as Stevedors Port Trust and other private employers get 13 holidays in a year. Since the workmen of this Company are also dock workers, it is fair and reasonable that they should also be given 13 dock holidays as declared by the Bombay Port Trust every year. Comparable concerns in this industry also given paid holidays to their workmen. The Union craves leave to put in statements showing the holidays, granted by various employers in the industry, at the time of hearing.

(10) *Leave.*—The next demand is in respect of leave. The Union has demanded that the following leave benefits should be granted to the workmen.

(a) *Privilege Leave.*—Each workman should be granted Privilege with pay at the rate of 1/11th day of work or attendance with right to accumulate up to 120 days.

(b) *Sick Leave.*—Each workman should be granted 15 days sick leave with pay with a right to accumulate up to 90 days.

(c) *Casual Leave.*—Each workman should be granted 15 days Casual Leave with pay for each year.

(11) At present the Company has no leave provisions. It is necessary that there must be a rule for grant of leave. It is also necessary that leave on account of sickness, for casual and, emergent reasons, and for rest and recuparation of health should be provided as demanded by the Union. The employers in comparable concerns in this industry as well as other employers who carry on their work in the dock give leave to their workmen as demanded by the Union. The charts showing leave benefits granted by various employers to their workmen will be produced at the time of hearing. On examination of those charts the Tribunal would be convinced that the Union's demand is fair and reasonable.

(12) *Photo Identity Cards and Attendence Cards.*—The next demand is in respect of Photo identity cards, and attendence cards. It is demanded that those workers who have not been issued with photo-identity cards should be immediately issued with the same. Every worker should be given attendance card and his attendance should be marked on such card every day whenever he reports for work. It is also demanded that the attendence of the workmen should be marked in their individual diaries maintained by the workmen.

(13) In respect of the Photo-identity cards, some workmen have been given such cards while others have not been given. It is necessary that all workmen who are employed in the docks in connection with the repairing of ships should be given the Photo-identity cards and dock entry permits, so that there workmen should not have any difficulty while entering the docks. Such Photo-identity cards are given to the workmen by all employers who have to carry on their work in the docks.

(14) With regard to attendence cards, the Company has with effect from 1st May, 1969 issued the attendence cards to the workmen, but their attendence was not marked by the Company on their individual diaries. It is necessary that the attendence record should be available to the a workmen and therefore their diaries should be properly and regularly marked by the employers, signifying their attendence. Other concerns in this industry have adopted the practice of signing individual diaries maintained by the workmen.

(15) *Wage Board Recommendations.*—By this demand the Union has asked for extension of the final recommendations of the Central Wage Board for Port and Dock Workers, to the workmen of this Company. It is submitted that the workmen angaged by the Company are dock workers within the meaning of the said expression appearing in the Dock Workers (Regulations of Employment) Act 1948. These workers are mainly employed in the docks and therefore, they are covered by the recommendations of the wage board for Port and Dock Workers. It is, therefore, submitted that all recommendations made by the Wage Board should, therefore, be made applicable to this Company and the employees working under it.

(16) For the aforesaid reasons the above demands made by the Union should be granted by the Honourable Tribunal.

PART—II

(17) This part covers the demand of the Union in respect wrongful termination of services of Shri Rajaram Surajbali, permanent carpenter. Shri Rajaram Surajbali was a permanent carpenter of the company and he was orally informed by Messers Jagdish and Baldev the partners of the Company that he should not report for work from 20th March, 1969 onwards.

(18) The Company did not issue any letter discharging him from service. The Company took away the personal diary of the said Shri Rajaram Surajbali and destroyed the same. Mr. Baldev also manhandled

and ill-treated the said workmen Shri Rajaram Surajbali. It was Shri Rajaram Surajbali who took leading part in organising the workers of this Company into this Union. The management did not like the part played by Shri Rajaram Surajbali and on many occasions threatened him with termination of service. Various complaints have been recorded with various police stations such as Yellow Gate Police Station, Sewree Police Station, Byculla Police Station and Kala Chowki Police Station. The employers went to the extent of engaging hirelings to assault the members of the Union including Shri Rajaram Surajbali. The action of the Company is both illegal and amounts to victimisation of the workman of his Trade Union activities. The Company did not give him any notice or wages in lieu of notice. No enquiry was conducted against him. The termination of service is thus clearly illegal and cannot sustain.

(19) When workmen was stopped on 20th March, 1969 immediately on the next day, that is 21st March, 1969, the Union wrote to the Company a letter bringing to the notice of the Company that the services have been terminated wrongfully and such termination amounted to victimisation. The Company did not reply. The demand was therefore, framed and was submitted to the management of the Company. Conciliation officer held negotiations, but could not bring the parties to a settlement. The matter was, therefore referred to this Hon'ble Tribunal for adjudication.

(20) It is submitted that the termination of Shri Rajaram Surajbali was clearly illegal and improper and the said workman is entitled to the relief of reinstatement with full back wages and continuity of service.

PART—III

(21) In this part the demand relating to retrenchment of workmen is included. In the first order of Reference, 30 workmen are covered and in the second order of Reference, 10 workmen are covered, thus in both references together the demand challenging retrenchment is in respect of 40 workmen.

(22) Some of these workmen have been served with notices dated 14th April, 1969 by which they were informed that since there was slackness in work it decided to terminate the services of the workmen with immediate effect. The workmen neither were given one month notice nor were they given wages in lieu of notice. They were also not given any retrenchment compensation that was payable to them under the Industrial Disputes Act in respect of their past services. Retrenchment of these workmen is therefore, clearly wrongful and is liable to be set aside.

(23) Further the reason for retrenchment that is given by the employers is slackness in work. It is not understood why the ship repairing work went slack that time. The work of ship repairing still remains as usual and this emplyer could have got sufficient work thereby continuing the employment of the workmen.

(24) The real reason behind the retrenchment is, however different. The employer had engaged these workmen on one ship for repairs, when work was gone to end by 10th April, 1969, the Company had called many workmen and personally told them that if all the workmen did not resign from the Union they would have to go out because in that event the Company would not take up any new contract for ship repairs. This threat of the management was a clear act of victimisation and the action of retrenchment taken by the management cannot therefore sustain.

(25) In respect of the other set of employees, the Company did not give any notice and just orally stopped them from work, informing them orally that their services were no longer required. The Union submits that the only reason why these workmen have been retrenched is because, they formed a Trade Union and did not agree to the suggestion of the management that they should resign from the Union. Thus it is a clear act of anti-labour practice and must be condemned by this Honourable Tribunal.

(26) Moreover, the management has not followed the principle of last come first go while retrenching the workers. On that ground also the retrenchment is bad in law.

(27) It is therefore, submitted that the workmen who are retrenched from the services of the Company should be immediately reinstated and paid salaries for the intervening period. If the Company desires to curtail work for sound and genuine reasons to the satisfaction of this Hon'ble Court, such number of employees should be retrenched only in accordance with the rules, prescribed in this behalf under the Industrial Disputes Act and on payment of retrenchment compensation due to them in respect of their past services.

(28) It is therefore prayed that the Hon'ble Tribunal may be pleased to grant the demand of the workmen covering the three parts mentioned above and grant full reliefs to them as per the demand.

(29) The Union craves leave to amend, add to or make alterations in the above statement of claims if and when necessary.

Bombay dated this 10th day of November, 1970.

For Transport and Dock Workers Union,
Sd.|
Assistant Secretary.

I, R. A. Pandit, Assistant Secretary, Transport and Dock Workers Union do hereby solemnly declare that what is stated in the above statement of claims is true to my own knowledge and information and I believe the same to be true. This verification is signed at Bombay on this 10th day of November, 1970.

Sd/-

[No. 73/5/70-P & D.]

K. D. HAJELA, Under Secy.

(Department of Labour and Employment)

New Delhi, the 27th December 1971

S.O. 298.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Bombay, in the industrial dispute between the employers in relation to the management of Bombay Port Trust, Bombay and their workmen, which was received by the Central Government on the 13th December, 1971.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BOMBAY.

REFERENCE No. CGIT-3 OF 1971

PARTIES:

Employers in relation to the Bombay Port Trust, Bombay.

AND

Their workmen.

PRESENT:

Shri A. T. Zambre, Presiding Officer.

APPEARANCES:

For the employers.—Shri R. K. Shetty, Deputy Legal Adviser, Bombay Port Trust, with Shri B. M. Mehta, Supdt. Engineer (M) B.P.T.

For the workmen.—Shri Vinod Joshi and Shri K. K. A. Nayar, Secretaries, Bombay Stevedores and Dock Labourers' Union.

Shri S. K. Shetye, General Secretary, Bombay Port Trust Employees Union.

STATE: Maharashtra INDUSTRY: Major Ports and Docks.

Bombay, the 3rd November 1971

AWARD

The Government of India, Ministry of Labour and Rehabilitation, Department of Labour and Employment by their Order No. L-31011/2/71(1)-P&D dated 8th July 1971 have referred to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the management of the Bombay Port Trust and their workmen in respect of the matters specified in the schedule hereto annexed:—

SCHEDULE

"Whether the demand of Bombay Stevedores and Dock Labourers' Union for introduction of rotation in respect of Chargemen of Bombay Port Trust is justified? If so, from what date it should be introduced?"

2. The circumstances leading to this reference may be stated in brief as follows:—

In the Chief Mechanical Engineer's Department of the Bombay Port Trust there are about 9 sections in which employees of the catogeries as chargemen are working. In the Hydraulic Department of Alexandra Docks there are 10 chargemen out of whom four are permanently working in the day shift which is from 8 A.M. to 5 P.M. While the remaining six are rotated in the second and third snifts. Simularly in the Hydraulic Department of the P & V Docks there are 10 chargemen out of whom 5 chargemen are permanently working in the day shift while the remaining are rotated in the second or third shifts. By such arrangement of retaining some of these chargemen permanently there was discontent among the workers and hence the Bombay Stevedores and Dock Labourers' Union had raised a dispute for the introduction of rotation of the chargemen in all the three shifts. Some of the chargemen are members of the B.P.T. Employees Union and that union had raised objections as the seniority of the chargemen in each section of the Bombay Port Trust was reckoned separately for the purpose of promotion. There were talks of negotiations between the two unions and the management and the Bombay Stevedores and Dock Labourers Union had served a strike notice and also raised a dispute which was taken up in conciliation and after the failure report was referred to this Tribunal for adjudication.

3. At the time of passing the reference order Government had also issued another order under section 10(3) of the Industrial Disputes Act prohibiting the continuance of the strike in existence in connection with the said dispute. Government had issued notice of the reference order to both the unions and the management and hence after receipt of the reference order by this Tribunal notices have been issued to the three parties.

4. The Bombay Stevedores and Dock Labourers Union have by their statement of claim contended that the union had been agitating for the introduction of the rotation system among all the chargemen in all the three shifts since January 1968. There were several discussions and in the meeting held on 31st March 1971 the Bombay Port Trust Employees Union had also agreed that all the chargemen in the two sections should be rotated in the three shifts from 1st May 1971. But thereafter it is alleged that the other union resiled and this union had to give a strike notice. It is contended that it is a well established and recognised principle that whenever there is shift working the workmen should be rotated in all the shifts at regular intervals to reduce hardship and undue strain on workmen while working in the second and third shifts. In this case all the three parties had agreed to introduce three shifts working among all the chargemen in the Alexandra and P&V Docks by rotation and the demand of the union for the introduction of rotation of all the chargemen of the three shifts was justified. They have further contended that it ought to have been introduced from 1st May 1971 and the employees should be given the benefit of the award from that date.

5. The Bombay Port Trust Employees Union did not file any statement of claim but made an application for adjournment contending that the order of reference was not properly drafted. The matter pertained to all the chargemen in all the sections of the Chief Mechanical Engneer's Department. There were about 9 sections and 70 chargemen. The reference order was not specifically regarding the two sections. It would give rise to complications and an amendment was necessary. The union also made an application to the Government for amending the order of reference.

6. The Bombay Port have by their written statement contended that the demand of the Bombay Stevedores and Dock Labourers' Union was confined only to the 20 chargemen working in the two Hydraulic Establishments at the Alexandra and P & V Docks and the employers had no objection to the demand of the union for the rotation being granted. They have further opposed the demand for implementation of the rotation system with retrospective effect.

7. As per the application of the Bombay Port Trust Employees Union the hearing of the reference was adjourned with the specific direction that the union would get the reference order amended before the next date. But they could not get it amended and hence it was again adjourned. On the date of the last hearing the B. P. T. Employees Union was absent and the matter was heard *ex parte*. Immediately the next day Shri S. K. Shetye, the General Secretary of the B. P. T. Employees Union approached the Tribunal and submitted that the Union was supporting the demand of the rotation of chargemen in all the three shifts provided the union would be free to demand the creation of a post of senior chargemen to provide adequate avenues for their promotion in the department.

8. The Bombay Stevedores and Dock Labourers' Union had made a demand about the introduction of rotation in respect of the chargemen in the two sections-Alexandra and P & V Docks. The reference order also speaks about the demand of the Bombay Stevedores and Dock Labourers' Union for introduction of rotation in respect of the chargemen. The union has in the statement of claim also made a claim about the chargemen working in the two sections only and I do not think it necessary to adjourn the hearing as chargemen from other sections had not appeared and were not concerned.

9. It cannot be disputed that whenever there is shift working the workmen should be rotated at regular intervals for reducing the hardship and undue strain on some workmen and as the management has no objection for the introduction it shall have to be held that the demand of the Bombay Stevedores and Dock Labourers' Union for the introduction of rotation in respect of the chargemen working in the Hydraulic Department of the Alexandra Docks and P & V Docks is justified.

10. At the time of hearing, the Bombay Stevedores and Dock Labourers' Union have given up their contentions for the implementation of the award from 1st May

1971. From the nature of the demand also it is clear that there can be no question of retrospective effect. As the demand of the Bombay Stevedores and Dock Labourers Union for rotation in respect of all the chargemen working in the Hydraulic Department of the Alexandra and P & V Docks is justified the management will introduce the system of rotation among the chargemen of these two sections in all the three shifts from the date this award becomes enforceable.

No order as to costs.

(Sd.) A. T. ZAMBRE,
Presiding Officer,
Central Govt. Industrial Tribunal, Bombay.

[No. L-31011/2/71-P&D.]

S.O. 299.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Bombay, in the industrial dispute between the employers in relation, to the management of Messrs Bombay Harbour Transport Company, Bombay and their workmen, which was received by the Central Government on the 13th December, 1971.

BEFORE THE CENTRAL GOVERNMENT LABOUR COURT, BOMBAY.

REFERENCE No. CGIT-5 of 1971

PARTIES:

M/s Bombay Harbour Transport Company, Jeevan Jyoti, Cawasji Patel Street, Bombay-1.

versus

Their workmen.

PRESENT:

Shri A. T. Zambre, Presiding Officer.

APPEARANCES:

For the employers.—Shri K. M. Jamadar, Industrial Relations Consultant.

For the workmen.—Shri D. Y. Kelkar, General Secretary, Motor Launch Employees Association.

STATE: Maharashtra. INDUSTRY: Major Ports and Docks

Bombay, dated 26th November 1971

AWARD

The Government of India, Ministry of Labour and Rehabilitation, Department of Labour and Employment by their Order No. L. 31013/2/71-P&D dated 20th August 1971 have referred to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the management of Bombay Harbour Transport Company, Bombay and their workmen in respect of the matters specified in the following schedule:—

SCHEDULE

"Whether the demand of the workmen of the management of Messrs. Bombay Harbour Transport Company, Bombay-1, for 20 per cent bonus for the year 1969-70 is justified? If not, what should be the quantum of bonus for the year?"

2. The workmen of the Bombay Harbour Transport Company are the members of the Motor Launch Employees Association, Bombay, and the Association by their letter dated 5th February, 1971 to the Regional Labour Commissioner and the company had raised dispute about the bonus to be paid to the employees for the year 1969-70. The Association has by its statement of claim contended that the dispute about bonus for the year 1969-70 is pending since long. Ever since April 1970 the management was being urged by the employees for the bonus but the management dodged the issue on one pretext or other and when they filed the dispute with the Regional Labour Commissioner (Central) the company evaded the proceedings under an excuse that the accounts were not ready and were not audited etc. Again the workers represented their grievances to the Regional Labour Commissioner (C) on 5th May, 1971 and thereafter the dispute was referred to this Tribunal.

3. By the statement of claim the union has contended that the Bombay Harbour Transport Company is a partnership company with three partners *viz.*, A. S. Saikh B. S. Toscano and K. V. Govind. These partners own other subsidiary concerns such as United Launch Service Bharat Launch Service, Vesto Launch Service etc. and though the union demanded to the employers their accounts, the company failed to give the accounts and when they finally showed the audited statement of accounts it bore the name of a different company; that the present dispute was with the Bombay Harbour Transport Co. the audited statement of accounts bore the name of the Harbour Motor Launch Service and it was alleged that roughly about 55 per cent of the total expenses of the company consisted of hire charges paid to the subsidiary concerns while salaries and wages and oil charges which were debited to the Bombay Harbour Transport Co., came to 33 per cent of the total expenditure which clearly indicated that the hire charges paid to the subsidiary concerns formed the cream of the profit and the formation of these companies was intended only to manipulate the accounts and deprive the workmen of their due share of profit.

4. The union by the statement had further contended that the profit and loss account shown was not truthful. It did not include all the charges collected by the company and requested the Tribunal to direct the management to submit the accounts of these subsidiary companies and the log books etc., and permit them to file their statement of claim after the company submitted its documents for scrutiny.

5. The reference was thereafter kept pending for the company to give inspection of the account books to the union but ultimately on the 25th instant the parties produced terms of settlement and requested the Tribunal to pass an award in terms of the same. By the first term of settlement it is provided:—

"Management agree to make payment of bonus to their employees @ 10 per cent of their total annual earnings for the year 1969-70 on or before 20th January, 1972."

The union has produced a copy of the statement of account signed by the Chartered Accountants R. Viraswami & Co. It is clear from the statement that it bears the name of Harbour Motor Launch Service and not the name of the employers in the present case *viz.*, Messrs Bombay Harbour Transport Company. In the first statement balance sheet there are no proper heads but it will appear from the sixth and seventh columns that the concern has paid Rs 30377 as income-tax and the profit and loss account statement shows a loss of Rs 48740.97 and there appears to be much substance in the contentions raised by the union in their application about the accounts.

6. However, as the parties have settled the dispute it is not necessary for this Tribunal to go into the question about the correctness or otherwise of the accounts. The management has agreed to pay bonus to the employees at 10 per cent of their total annual earnings and as the union that had previously made the allegations has accepted the same it shall have to be held that the terms of settlement are reasonable and hence I pass an

award in terms of the memorandum of settlement exhibit 1 which shall form part of this award.

No order as to costs.

(Sd.) A. T. ZAMBRE,
Presiding Officer,
Central Govt. Industrial Tribunal, Bombay.

EXHIBIT I

BEFORE THE PRESIDING OFFICER OF THE INDUSTRIAL TRIBUNAL, SHRI Z. A. ZAMBRE, BOMBAY.

REFERENCE: CGIT/5 OF 1971

BETWEEN

Bombay Harbour Transport Co., Bombay.

AND

The Workmen Employed by them Represented by Motor Launch Employees' Association, Bombay.

In the matter of payment of bonus to the employees for the year 1969-70.

May please your Honour,

The aforesaid dispute has been settled amicably by and between the parties and it is prayed that an Award be given in terms of the annexed settlement.

The parties pray for such orders as your Hon'ble Court may deem fit and proper.

(Sd.) ILLEGIBLE,
Bombay Harbour Transport Co., Bombay.

(Sd.) ILLEGIBLE,
Motor Launch Employees' Association, Bombay.

Dated: 22*nd November*, 1971.

Memorandum of Settlement

PARTIES TO THE DISPUTE

Representing the Employer.

1. Shri A. S. Shaikh, Partner.
2. Shri B. S. Toscano, Partner, Bombay Harbour Transport Co. Bombay.

Representing the employees.

3. Shri D. Y. Kelkar, Genl. Secretary, Motor Launch Employees Association, Bombay.

Short Recital

The parties mentioned above whereas agreed to discuss the matter regarding payment of bonus for the year 1969-70 pending before Presiding Officer, Central Government Industrial Tribunal, Bombay, Shri A. T. Zambre. After prolonged mutual discussions, both the parties reached to an amimable settlement on the following terms:—

Terms of Settlement

1. Management agree to make payment of bonus to their employees @ 10 per cent of their total annual earnings for the year 1969-70 on or before 20th January, 1972.
2. Both the parties agree to request the Presiding Officer, Central Government Industrial Tribunal, Bombay to grant an Award on the basis of this mutual settlement arrived at between the parties.
3. Both the parties agree to forward a copy of this mutual settlement to the Presiding Officer, CGIT, Bombay, for passing an Award in due course.

Witnesses

1. (Sd.) G. B. BIRHADE,
   Assistant Labour Commissioner,
   (Central), Bombay.
2. (Sd.) G. RAMACHANDRAM,

Signature of the Parties

1. (Sd.) A. S. SHAIKH,
2. (Sd.) B. S. TOSCANO,
3. (Sd.) D. Y. KELKAR.

Bombay, the 22nd November, 1971.

[No. L-31013/2/71-P&D.]

O. P. TALWAR, Dy. Secy.

Department of Labour and Employment

New Delhi, the 27th December 1971

S.O. 300.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Kotma Colliery of Associated Cement Company Limited, Post Office Kotma District Shahdol and their workmen, which was received by the Central Government on the 22nd December, 1971.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, JABALPUR

Dated October 30, 1971.

PRESENT:

Shri M. Chandra.—Presiding Officer.

CASE NO. CGIT/LC (R)(11) OF 1971

PARTIES:

Employers in relation to the management of Kotma Colliery of Associated Cement Company Limited, Post Office Kotma, District Shahdol (Madhya Pradesh) and their workmen.

APPEARANCES:

For employers.—S/Shri I. M. Nanawati, Advocate and M. S. Kapoor.

For workmen.—S/Shri Gulab Gupta, Advocate and G R. Swamy.

Industry: Cement. *District*: Shahdol (M.P.)

AWARD

By an order No. 1/54/70-LRII, dated 21st April, 1971 the Central Government referred under Section 10 of the Industrial Disputes Act, 1947 the following industrial dispute to this Tribunal, for adjudication:—

DISPUTE

"Whether the management of Kotma Colliery of Associated Cement Company Limited, Post Office Kotma, District Shahdol is justified in not placing the Timber Mazdoors in New Category III as per recommendations of the Central Wage Board for Coal Mining Industry? If not, to what relief are the workmen entitled and from what date?"

Briefly stated the case of the Kotma Colliery Mazdoor Sangh was this.

The Timber Mazdoors were placed in Categories II and III of the Mazumdar Award as modified by the L.A.T. Award. Thereafter the recommendations of the Coal Wage Board superseded and replaced the coal

wage structure. These recommendations were accepted by the Company by an agreement between the Company and the Union on 21st November, 1967. The agreement introduces the new pay scales with retrospective effect from 15th August, 1967. Timber Mazdoors were placed in Category II and III of the Coal Wage Board recommendations. In accordance with the note on categorisation mazdoors already in Category II were to be placed in the new Category II and those in the old Category III were to be placed in the new Category III Thus all Timber Mazdoors who were in Category (old) III were entitled to be placed in the new Category III The Kotma Colliery has 84 Timber Mazdoor all of whom are in Category III of the Mazumdar Award as modified by the L.A.T. Award. They were all entitled to be placed in the new Category III, but the Company did not properly fit them in Category III and all of them were given new Category II resulting in financial loss to these Timber Mazdoors.

The Kotma Colliery Kamgar Sangh supports the Kotma Colliery Mazdoor Sangh's case in full.

The management contends that there has been no espousal of the workmen's claim by a substantial number of workmen and that consequently the reference of the dispute for adjudication to this Tribunal is bad and void in law and the Tribunal has no jurisdiction to adjudicate upon the same. The management further contended that the recommendations of the Coal Wage Board have been implemented by the Company by entering into a settlement dated 26th November, 1967, that the said settlement has not been terminated and continues to be in force and binding on the parties and that for this reason also reference is bad and void in law and that this Tribunal has no jurisdiction to adjudicate upon it. On merits, the management contends that the Company has properly placed Timber Mazdoors in Category II as recommended by the Coal Wage Board and is fully justified in not placing them in Category III as it does not require the Timber Mazdoors to assist the Timber Mistries in setting timber props of 10 ft. and above.

The following issues arise for determination:—

Issues

1. Whether the management of Kotma Colliery of Associated Cement Company Limited, Post Office Kotma, District Shahdol is justified in not placing the Timber Mazdoors in New Category III as per recommendations of the Central Wage Board for Coal Mining Industry? If not, to what relief are the workmen entitled and from what date?
2. Is the reference bad in law and void and beyond the jurisdiction of this Tribunal as alleged in para 3 of the written statement of the management?
3. Is the reference bad and void in law and beyond the jurisdiction of this Tribunal as alleged in para 4 the written statement of the management?

Findings

The parties have now arrived at a settlement and pray for an award in terms thereof. By this settlement the timber mazdoors who were in Category III of the Mazumdar Award as modified by the L.A.T. Award are to be placed in the new Category III of the Coal Wage Board on 15th August, 1967 with adjustments to new pay scale as provided in Section F of Chapter VIII of the recommendations of the Central Wage Board for Coal Mining Industry. Timber Mazdoors so placed in the new Category III will not be entitled to any arrears on account of their fixation in the new Category III for the period prior to 1st April, 1971 The arrears payable to Timber Mazdoors refixed in the new Category III as aforesaid are to be paid to them with effect from 1st April, 1971 within one month of the date of publication of this award.

On going through the settlement and the contentions of the parties on the record, I find that this settlement is just and fair and in the interest of both the parties. It is, therefore, accepted. An award is made accordingly in terms of the settlement which shall form part of the Award. In the circumstances of this case, parties will bear their own costs. Let the award be sent to the Central Government.

(Sd.) M. CHANDRA,

Presiding Officer.

30-10-1971.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, JABALPUR

In the matter of Reference No. CGIT/LC(R)(11)/71.

BETWEEN:

The Associated Cement Cos., Ltd.,
Kotma Colliery,
P.O. Kotma Colliery,
District Shahdol (M.P.)

Versus

Its Workmen as represented by Kotma Colliery Mazdoor Sangh, and Kotma Colliery Kamgar Sangh, P.O. Kotma Colliery, Distt. Shahdol (M.P.)

May it please the Hon'ble Tribunal

The parties hereto have, in a spirit of mutual co-operation, arrived at the following Settlement and pray for an Award in terms thereof.

Terms of Settlement

1. The Timber Mazdoors at the Kotma Colliery of the Associated Cement Companies Limited, who were in Cat III of Mazumdar Award and modified by the L.A.T. will be placed in new Cat. III of the Wage Board Recommendations on 15th August 1967, the date of implementation of the Wage Board Recommendations with adjustment to new pay scale as provided in Section 'F' of Chapter VIII of the Recommendations of the Central Wage Board for Coal Mining Industry.

2. The Timber Mazdoors so placed in the new Category III as provided in para 1 above will not be entitled to any arrears on account of their fixation in the new Category III for the period prior to 1st April 1971.

3. The arrears payable to these Timber Mazdoors refixed in new Cat. III as aforesaid will be paid to them with effect from 1st April 1971 within one month from the date of publication of this Award.

Dated at Jabalpur this 30th day of October 1971.

For Kotma Colliery Mazdoor Sangh	*For* The Associated Cement Cos. Ltd., Kotma Colliery.
(Sd.) GULAB GUPTA	(Sd.) I. M. NANAVATI, Advocate
For Kotma Colliery Kamgar Sangh.	
(Sd.) G. R. SWAMY.	

Filed and verified by Shri I. M. Nanavati, Advocate for the Management and by Sri Gulab Gupta, Advocate for the Kotma Colliery Mazdoor Sangh, and by Sri G. R. Swamy, Vice President, Kotma

Colliery Kamgar Sangh, who is identified by Sri Gulab Gupta, Advocate.

(Sd.) I. M. NANAVATI.
(Sd.) G. R. SWAMY.
(Sd.) GULAB GUPTA.

(Sd.) M. CHANDRA,
30-10-1971

Part of Award

(Sd.) M. CHANDRA,
Presiding Officer,
30-10-1971.

[No. F. 1/54/70-LRII.]

BALWANT SINGH, Under Secy.

MINISTRY OF FINANCE

(Department of Revenue and Insurance)

CUSTOMS

New Delhi, the 8th January 1971

S.O. 301. In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 72-Customs, dated the 16th August 1971, namely :-

In the said notification, after item 17 the following item shall be inserted, namely :--

"18 Tea."

[No. 11-Customs/F. No. 552/183/71-L.C.I.]

K. SANKARARAMAN, Under Secy

वित्त मंत्रालय

(राजस्व और बीमा विभाग)

सीमा शुल्क

नई दिल्ली, 8 जनवरी, 1971

एस० ओ० 301.—सीमा-शुल्क अधिनियम 1962 (1962 का 52) की धारा 25 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, अपना समाधान हो जाने पर कि ऐसा करना लोक हित में आवश्यक है भारत सरकार के वित्त मंत्रालय (राजस्व और बीमा विभाग) की तारीख 16 अगस्त, 1971 की अधिसूचना सं० 72 सीमा-शुल्क, में एतद्-द्वारा निम्नलिखित संशोधन करती है अर्थात् —

उक्त अधिसूचना में मद 17 के पश्चात् निम्नलिखित मद अन्त स्थापित की जाएगी अर्थात्—

"18 चाय"।

[सं० 11 सीमा-शुल्क/फा० सं० 552/183/71-एल०सी० I]

के० शंकरामन अवर सचिव

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